

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

STEVE M. PERRY
Claimant

APPEAL NO. 10A-UI-12505-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

LYNCH LIVESTOCK INC
Employer

OC: 08/01/10
Claimant: Respondent (1)

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated August 25, 2010, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 27, 2010. The claimant participated. The claimant was represented by Mike McEnroe, attorney at law. The employer participated by Steve Demaray, livestock manager, and Pete Blue, manager—yard help. The record consists of the testimony of Steve Demaray; the testimony of Pete Blue; the testimony of Steve Perry; and Employer's Exhibits 1 through 9.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer purchases and sells livestock. The claimant worked for the employer on two different occasions. The second period of employment began on August 19, 2002. At the time of his termination, the claimant was on light duty due to a work-related injury and was handling paperwork. He was a full-time employee. His last day of work was August 3, 2010. He was terminated on August 3, 2010.

The employer cited no particular incident that led to the claimant's termination. The reasons given for the claimant's termination were substandard work; failure to perform work; failure to accept policies on how the work was to be accomplished; disruptive behavior; and excessive cell phone use.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The definition of misconduct excludes unsatisfactory job performance. The employer has the burden of proof to show misconduct.

The evidence in this case establishes only that the claimant's job performance was not satisfactory to the employer. The employer may have had good business reasons to terminate the claimant, but there is very little in the way of testimony or documentary evidence to substantiate misconduct. The administrative law judge questioned both witnesses from the employer on what incident led to the claimant's termination and neither cited anything specific. Rather, both witnesses testified that it was a management decision that the claimant was a poor worker and used his cell phone too much. No specific instances were cited. If an individual is to be disqualified from receiving unemployment insurance benefits for misconduct, it is incumbent upon the employer to show misconduct as that term is defined in unemployment insurance law. This, the employer did not do. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's decision dated August 25, 2010, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw