

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARREN JOHNSON
Claimant

APPEAL NO. 12A-UI-12490-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 04/01/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 12, 2012, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 14, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Thelma Watkins. No one participated in the hearing on behalf of the employer because the person representing the employer, Alejandra Rojas, was not available to take the call at the time of the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer in the boxing area from May 21, 2012, to September 21, 2012. The claimant was informed and understood that under the employer's work rules, reporting to work under the influence of alcohol was prohibited.

On September 21, 2012, the claimant was scheduled to work from 4 p.m. to 12:30 a.m. In the morning, the claimant drank two beers while doing yard work. He finished his last beer at 11 a.m. He drove to the plant at about 3:30 p.m. to talk to someone in human resources about his check. The claimant has a stuttering problem so the person he spoke with asked if he had been drinking. The claimant told the person he had a couple of beers that morning.

The person then asked the claimant to have someone come and pick him up from the plant. The claimant was not intoxicated but did not want to be argumentative so he agreed to call someone to pick him up. He found out that he would have to wait two hours before he could get a ride home. Since he did not believe he was under the influence of or impaired by alcohol, he drove home on his own.

On September 24, 2012, the employer discharged the claimant for reporting to the plant under the influence of alcohol and for driving home after he agreed to get a ride home.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

Alejandra Rojas called the Appeals Bureau at 8:53 a.m., after the hearing record had closed in the case. She explained that she thought the hearing was on another day and was busy when she was called for the hearing.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the hearing should be reopened in this case. The employer has not shown there was an emergency or other good cause reason to reopen the hearing. 871 IAC 26.8(3).

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The employer had failed to meet its burden to prove the claimant was intoxicated when he reported to work.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated October 12, 2012, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs