

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**RUBEN L ESQUIVEL
301 W 5TH ST
WEST LIBERTY IA 52776**

**WEST LIBERTY FOODS
207 W 2ND ST
PO BOX 318
WEST LIBERTY IA 52776**

**Appeal Number: 04A-UI-12179-CT
OC: 10/17/04 R: 03
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

West Liberty Foods filed an appeal from a representative's decision dated November 4, 2004, reference 01, which held that no disqualification would be imposed regarding Ruben Esquivel's separation from employment. After due notice was issued, a hearing was held by telephone on December 9, 2004. Mr. Esquivel participated personally. The employer participated by Jaime Ruess, Human Resources Manager. Rosie Paramo Ricoy participated as the interpreter.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Esquivel was employed by West Liberty Foods from

May 29, 1979 until October 6, 2004 as a full-time production worker. He was discharged based on an allegation that he attempted to steal a piece of equipment belonging to the employer.

Sometime after 10:00 p.m. on September 30, the employer discovered a hand grinder hidden under a transformer. The employer believed someone had hidden it there with the intent of removing it from the facility. Before the first shift arrived on October 1, the employer coated the opening of the transformer with "anti-seize," a grease-like substance usually used to prevent parts from sticking or locking. Mr. Esquivel was later observed attempting to wash "anti-seize" from his hands. He also had the substance on his right arm. He could not identify for the employer where he had come across the substance. When the employer checked, the grinder was still in the area under the transformer. Based on the fact that he had "anti-seize" on his person and could not explain its presence, the employer concluded that Mr. Esquivel was responsible for the attempted theft and, therefore, discharged him.

Other employees had access to the area where the grinder was found. The "anti-seize" is used in other areas of the facility. No one saw Mr. Esquivel place the grinder under the transformer or go near the area on October 1. Mr. Esquivel was suspended on October 1 and notified of his discharge on October 6, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Esquivel was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Esquivel was discharged because the employer believed he intended to steal a piece of equipment. The employer's conclusion was based on the fact that he had "anti-seize" on his person and could not explain how it got there. Although this evidence may have been sufficient for the employer to base its decision to discharge, it is not sufficient to establish misconduct. No one observed Mr. Esquivel place the grinder under the transformer on or before September 30 or check under the transformer on October 1. Inasmuch as "anti-seize" is used throughout the facility, its presence on Mr. Esquivel is not conclusive proof that it was on him because he was under the transformer. Given the length of Mr. Esquivel's employment, the administrative law judge is inclined to resolve any doubt in his favor.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to establish disqualifying misconduct. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed.

DECISION:

The representative's decision dated November 4, 2004, reference 01, is hereby affirmed. Mr. Esquivel was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs