

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FERNANDO GARCIA

Claimant

APPEAL NO. 06A-UI-09322-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN MORRELL & COMPANY

Employer

**OC: 08/20/06 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Fernando Garcia (claimant) appealed a representative's September 15, 2006 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with John Morrell & Company (employer) for violation of company rules. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 5, 2006. The claimant was represented by Jay Smith, Attorney at Law, and participated personally through Giovvy Carnet, Interpreter. The employer participated by Steve Joyce, Director of Human Resources.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on January 22, 2001, as a full-time laborer. The claimant started work at 6:30 a.m. He took a lunch break from 11:30 a.m. to 12:00 p.m.

The claimant and his co-workers appeared for work at 6:30 a.m. by the worker's watches. The clock on the wall was incorrect and read 6:23 a.m. The workers agreed and changed the clock on the wall to reflect the proper time. The supervisor was present, observed the worker's actions and did not object. At 11:30 a.m., both by the watches and wall clock, the workers took a lunch break. The employee's returned to work at noon and started working. The supervisor changed the wall clock to 11:53 a.m. The workers stepped back from the line and asked the supervisor what she was doing. The supervisor asked the claimant and others to return to work. The workers were not supposed to work at 11:53 a.m. and did not step back on the line. When the employees did not return to work, the supervisor radioed the plant manager. Hearing this, the employees returned to work.

On August 17, 2006, the claimant was suspended for his actions. He was terminated on August 17, 2006, for leaving his workstation without authorization, refusing to do the work he was assigned to perform, creating a work stoppage, and insubordination.

The testimony of the employer and claimant was inconsistent. The administrative law judge finds the claimant's testimony to be more credible because the employer was not an eyewitness. The employer testified that an eyewitness was available but did not produce that witness.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds the claimant was not discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. Part of the reason the employer terminated the claimant was for not working when it was the claimant's shift. The employer did not prove that the claimant's after-lunch shift had started at 11:53 a.m. The claimant's after-lunch shift did not start until noon. The claimant cannot be expected to work when it was during his lunch break.

The other reason the employer terminated the claimant was due to his insubordinate behavior to the supervisor. The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's September 15, 2006 decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw