

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE A CHAVEZ

Claimant

APPEAL NO. 14A-UI-02809-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN MORRELL & COMPANY

Employer

OC: 08/25/13

Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jose Chavez (claimant) appealed a representative's March 11, 2014, decision (reference 07) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with John Morrell & Company (employer) for gross negligence in connection with his work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 4, 2014. The claimant participated personally. The employer participated by Vickie Schwartz, Human Resources Administrative Assistant. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 24, 2013, as a full-time cook house chill operator. The claimant signed for receipt of the employer's handbook on October 24, 2013. The claimant's supervisor told the claimant there was a high turnover rate in the position because it was one of the most difficult jobs at the company. The employer did not issue the claimant any warnings prior to his termination. The claimant was trained on October 31, 2013. He was trained on other issues on December 5, 2013, January 2, and 15, 2014. On January 27, 2014, the employer issued the claimant an hourly performance appraisal. The claimant needed to improve but had shown improvement as of January 15, 2014.

On January 28, 2014, the claimant followed procedure, checked his master list, looked at the rack tag, selected the correct rack and product, and cooked at the correct cook cycle. The claimant was unaware that a coworker put an incorrect product tag on a different type of meat on an incorrect rack. The claimant was not experienced enough to determine types of meats and did not realize the wrong type of meat was on the rack. The employer terminated the claimant on January 30, 2014, for cooking an incorrect product and causing a deviation. The coworker was not terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes 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). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct at the hearing. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's March 11, 2014, decision (reference 07) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css