

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL F MCGUIRE
Claimant

APPEAL NO. 12A-UI-05857-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA SELECT FARMS INC
Employer

OC: 04/08/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Michael McGuire (claimant) appealed a representative's May 9, 2012 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Iowa Select Farms (employer) for carelessness in performing his work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 13, 2012. The claimant participated personally. The employer participated by Cathy Rieken, Human Resources Specialist, and Douglas Bates, South Farm Manager. 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 September 26, 2007, as a full-time farm technician. The claimant signed that he received a copy of the employer's handbook but the employer ran out of handbooks on the day the claimant signed. He thought he would receive one in the future but never did.

The claimant worked without incident for some time. In early January 17, 2012, the claimant had a heart attack and surgery. He was absent for one week and returned to work. Near the middle of January 2012, the claimant applied for a job as supervisor. During the interview the claimant pointed out areas the employer could improve. The employer did not seem to take the criticism well. Shortly after the interview on January 17, 2012, the employer issued the claimant a written warning for job performance. The supervisor listed items in the warning that the claimant should have performed. The claimant took the supervisor to the feeders and asked what was wrong with them. The supervisor could not find anything wrong and walked away. The claimant thought he was issued the warning because of his critical remarks during the interview.

On March 27, 2012, the claimant, a co-worker and a new worker castrated approximately 700 piglets. During this procedure the three saw that some piglets had intestines that ruptured through the incision. The three taped the piglets, as was the employer's protocol. On March 28, 2012, 38 of the piglets had expired or had to be euthanized. This number was a bit high. The employer had experienced as many as 80 lost piglets in one day.

On March 30, 2012, the employer sat down with the claimant to issue him a warning for being careless on March 27, 2012. The claimant told the employer that the information was incorrect. The employer thought the claimant was working alone and he was not. The employer did not realize that the supervisor who issued the warning on January 17, 2012, could not show the claimant any wrongdoing. During the meeting on March 30, 2012, the employer decided to terminate the claimant because he did not accept responsibility for doing things wrong.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer indicated the final incident was the claimant's failure to accept responsibility for his actions. The employer did not provide first hand information that the claimant was involved in any wrongdoing. The employer's witnesses were not present at the time of the castration of the piglets and did not know that the claimant was working with two other people. Based on the testimony at the hearing the employer terminated the claimant for not accepting responsibility for wrongdoing that he did not create. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's May 9, 2012 decision (reference 01) 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