

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN A LOPEZ
Claimant

APPEAL NO. 07A-UI-03233-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

**OC: 03-04-07 R: 01
Claimant: Appellant (1)**

Section 96.5(2)-a - Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a representative's decision dated March 26, 2007, reference 07, which denied benefits on his separation from West Liberty Foods LLC. After due notice was issued, a hearing was held by telephone on April 17, 2007. Claimant participated. Employer participated by Jamie Rues. Exhibits One through Three were received in evidence.

ISSUE:

The issue in this matter is whether Mr. Lopez was discharged from employment for misconduct in connection with his work.

FINDINGS OF FACT:

Mr. Lopez was employed by this company from January 21, 1991 until March 2, 2007 when he was discharged from employment. Mr. Lopez held the position of team leader and was paid by the hour. The claimant was discharged for failing to follow specific work instructions after being warned to do so in the past. Mr. Lopez had been warned to follow proper rotation and to allow employees to visit the nurse and/or take bathroom breaks within a 15-minute frame. Mr. Lopez was on a second stage disciplinary warning at the time of the final incident when Mr. Lopez had failed to allow a production worker to go to the nurse in spite of repeated requests. Because the claimant had been repeatedly warned and the violation was serious, a decision was made to terminate Mr. Lopez.

It is the claimant's position that he was attempting to maintain production requirements and that the production worker's requests were not repeated.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the employer has sustained its burden of proof establishing that the claimant's discharge was disqualifying. The evidence establishes that Mr. Lopez had been reasonably and repeatedly warned to adhere to company requirements and regulatory regulations regarding rotation of employees, bathroom breaks and access to the company's nurse's area. Although warned,

Mr. Lopez continued to violate these directives. He was discharged based upon a specific complaint from a production worker that Mr. Lopez would not allow her access to the company's nurse although he was aware of the necessity and she had repeatedly made the request. Based upon the claimant's previous history of not following these requirements and the specificity of the production worker's complaints, the employer investigated and determined the claimant had once again violated company policy. The administrative law judge finds based upon the evidence in the record that the employer has sustained his burden of proof by a preponderance of the evidence in this matter. The claimant's discharge was disqualifying. Benefits are withheld

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

DECISION:

The representative's decision dated March 26, 2007, reference 07, is hereby affirmed. The claimant was discharged under disqualifying conditions. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to 10 times his weekly job insurance benefit amount, providing he satisfies all other conditions of eligibility.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

tpn/pjs