

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE L DELGADO**  
Claimant

**WEST LIBERTY FOODS LLC**  
Employer

**APPEAL NO. 12A-UI-13111-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/07/12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated October 26, 2012, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 3, 2012. The claimant participated personally. The employer participated by Nikki Bruno, human resources supervisor; Chad Schnepfer, operations manager; and Tom Alberti, plant manager. The record consists of the testimony of Nikki Bruno; the testimony of Chad Schnepfer; the testimony of Tom Alberti; and the testimony of Jose Delgado.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a meat processing facility located in West Liberty, Iowa. The claimant was hired on December 29, 2010. He was a full-time blender operator, which is production labor. His last day of work was October 12, 2012. He was terminated on October 12, 2012, because the employer believed he had stolen and eaten another team member's lunch.

The series of events that led to the claimant's termination began on October 11, 2012, which was a Thursday. A team member reported that his lunch had been getting stolen. Employees were permitted to bring lunches and store the lunches either on a shelf or in the refrigerator. The employer looked at the surveillance footage and saw the claimant take a lunch off the shelf. The claimant was asked about it and his story was "believable" and so the matter was dropped.

The same team member reported a stolen lunch on October 12, 2012. Surveillance footage was examined and the claimant was seen taking the lunch off the shelf. The claimant believed that it was his lunch as it was the same type of container. The lunch was rice and beans. The claimant denied that he knowingly took anyone else's lunch.

## REASONING AND CONCLUSIONS OF LAW:

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 claimant is eligible for unemployment insurance benefits. The employer had the burden of proof to establish misconduct and the administrative law judge concludes that insufficient evidence was presented by the employer to show misconduct. The claimant testified that he took another team member's lunch by mistake. He had brought rice and beans and used chili powder on his fruit. He took a container that had rice and beans and chili powder that looked like his lunch. The employer did not present the surveillance footage as evidence and therefore the administrative law judge could not examine it to see if the claimant's actions showed any deception when taking the lunch. There was no evidence that the lunch was labeled in any way that might have alerted the claimant he had the wrong lunch. Testimony from the other employee was not provided, which might have been the basis for the judging the credibility of the claimant's testimony. There simply is not enough evidence to conclude that the claimant knowingly and deliberately took a lunch that did not belong to him. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated October 26, 2012, reference 01, is affirmed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs