

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRYAN J SMITH
Claimant

APPEAL NO. 09A-UI-00301-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS
Employer

OC: 10/26/08 R: 04
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Bryan Smith (claimant) appealed a representative's January 2, 2009 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with West Liberty Foods (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 22, 2009. The claimant participated personally. The employer participated by Sarah Schneider, Human Resources Generalist.

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 October 29, 2007, as a full-time team lead for third-shift shipping. On October 24, 2008, the employer met with employees and said that jobs were being eliminated and other positions might be open. The human resources person offered the claimant two opportunities. The claimant told her he could not work second shift but would be interested in interviewing for a third-shift maintenance position. The human resources person told the claimant to appear for an interview on October 27, 2008.

Later, the human resources person thought the claimant said he would work the second shift position and interview for the third shift position. The claimant did not show up at 4:00 p.m. on October 27, 2008, for the second shift position because he did not know about it. He appeared at 6:45 p.m., fifteen minutes early, for his third shift interview. The supervisor said he knew nothing about the interview, told the claimant to contact the Human Resources Department the following morning, and sent the claimant home.

On October 28, 2008, the claimant telephoned the Human Resources Department. They told him that he should have appeared for work for the second shift job on October 27, 2008, and terminated him. The employer had not issued the claimant any warnings prior to his termination.

Later, the employer said the claimant was absent without notice on October 27, 28, and 29, 2008. According to the handbook, the claimant was considered to have voluntarily quit work after three days.

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). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but did not. The employer did not provide firsthand testimony at the hearing and, therefore, did not provide sufficient eyewitness 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 January 2, 2009 decision (reference 02) 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/kjw