

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARNELL T MOSLEY**  
Claimant

**APPEAL NO. 11A-UI-11956-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**OC:08/14/11**  
**Claimant: Appellant (2)**

Section 96.5-2-A – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated September 8, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 5, 2011. Claimant participated. Employer participated by Nikki Bruno, Human Resources Supervisor, and Merlin Wallace, Maintenance Supervisor. The record consists of the testimony of Nikki Bruno; the testimony of Merlin Wallace; the testimony of Darnell Mosley; and Claimant's Exhibit A.

**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 October 25, 2010, as a full-time maintenance mechanic. The claimant's last day of actual work was August 2, 2011. The claimant was terminated on August 11, 2011.

On August 2, 2011, the claimant had a disagreement with another employee named Andy. The claimant had gone to the laundry room to get his clothes and did not hear a page on the walkie talkie that a line had gone down. When he returned to the maintenance area after getting his laundry, he and Andy got into an argument over the missed call. Both Andy and the claimant shouted profanities at each other.

Andy reported to Merlin Wallace, the supervisor, that the claimant had threatened him. Mr. Wallace asked the claimant about the incident. The claimant told Mr. Wallace that he had told Andy that he (the claimant) would kick his butt. The claimant also said that he would split Andy's head open; make bail; and do it again. These latter words were not said to Andy but

rather to Mr. Wallace about Andy. Mr. Wallace told the claimant that he did not want to hear this type of language and the claimant apologized. He said he was frustrated with Andy.

Human resources was informed about the situation and the claimant was placed on suspension pending an investigation. The initial decision was to allow the claimant to return to work following the suspension. When the claimant met with human resources after the three days, he asked about his pay. A human resources person named Maria interpreted his comment as questioning her discipline. The claimant was then placed on further suspension and additional investigation was done. The employer decided that the claimant had not accepted responsibility for his actions and he would not be allowed to return to work. He was terminated on August 11, 2011.

The employer has a written policy that prohibits the use of threatening language; disorderly conduct; and intimidation. The employer also forbids a refusal to cooperate in an investigation.

### **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.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also *Greene v. EAB*, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

The critical issue in this case centers on why the claimant was *terminated*. On August 2, 2011, the claimant was suspended after another employee reported he had been threatened by the claimant. The claimant admitted that he and this other employee, Andy, had gotten into an argument and that he told that employee he would "kick his butt." The claimant also used threatening language when he described the incident to his supervisor. Profane language was used by the claimant. The claimant's actions on August 2, 2011, did violate the employer's policies on violence in the workplace.

The employer's first decision was that the claimant could come back to work after serving a three-day suspension. When someone named Maria from human resources met with the claimant about his suspension and return to work, Maria apparently felt that the claimant was not taking his suspension seriously. He also asked about his pay and she decided that he was questioning her authority. Maria did not testify at the hearing. The administrative law judge concludes that it was not the claimant's actions on August 2, 2011, that led to his termination. He was terminated because someone who did not testify at the hearing did not like his attitude about the way this incident was handled. The employer also cited some additional investigation that had to be done because the claimant brought up some unknown claims that he had not made before. Exactly what he said that caused this additional investigation was not entirely clear.

There is not enough evidence in this record that the claimant's actions following his suspension constituted misconduct. Ms. Bruno, who did testify at the hearing, did not have firsthand knowledge of most of the facts. Because Maria did not testify, the administrative law judge could not weigh her testimony against the claimant's testimony. The actual decision makers for the employer did not explain why the claimant's words and actions following the suspension were a reason for termination. This is not to condone the claimant's actions on August 2, 2011. The employer, it must be repeated, did not terminate the claimant for what he did and said on August 2, 2011. The claimant was terminated for what he said and did *after* August 2, 2011. The employer did not provide enough information from individuals who were actually present and made the decision to terminate the claimant on what those post August 2, 2011, were.

The employer has not sustained its burden of proof that the claimant was discharged for a current act of misconduct. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated September 8, 2011, reference 01, is reversed. 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

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