

2004 until August 16, 2005. He was a full-time production worker. At the time of hire the claimant received a copy of the employee handbook, in Spanish, which set out the disciplinary procedure. An employee may be fired for receiving four written warnings in a floating 12-month period, and the warnings do not have to be for the same rule violation.

Mr. Gomez received written warnings on April 29, June 16, and August 2, 2005. He denied receiving warnings but did acknowledge he had been taken to the human resources office, where his supervisor talked to him about doing "bad things." An interpreter and union representative was present on each occasion to read the warning to him, and he refused to sign two of them, but the union representative "signed off" on them to acknowledge the warning had been discussed with him. The final warning notified him his job was in jeopardy.

On August 15, 2005, Supervisor Mario Almanza was trying to locate the claimant but he had already left for the day. The supervisor discovered three-quarters of a barrel of ribs at the claimant's work station which he had not completed. Work rules require production employees to finish up all the meat at the work station before leaving. Mr. Almanza found someone else to finish up the work and the next day took the claimant to the human resources office. An interpreter and union representative, Effren Aragon, was present when the claimant was told he was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

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).

The claimant denied he left any unprocessed product in his barrel at the end of his shift on August 15, 2005. The employer's report is to the contrary. It is therefore a matter of credibility which the administrative law judge resolves in favor of the employer for the following reason.

Mr. Gomez changed his testimony regarding warnings he had received. During the portion of the hearing on September 28, 2005, he denied receiving any warnings but volunteered that his supervisor had taken him to the office and told him he was doing "bad things." He did not feel these were warnings because he did not feel he was doing anything wrong in regard to his work duties. However, at the conclusion of the hearing on October 14, 2005, he denied making that admission and denied any recollection at all of the incidents. This negatively impacts the claimant's credibility.

The administrative law judge therefore concludes that the claimant had received notice his job performance was no satisfactory, and his job was in jeopardy. The final incident which precipitated his discharge was when he left at the end of his shift with a barrel of unprocessed meat product, which another employee had to be paid overtime to finish. This is a violation of known work rules and a refusal to do his work as instructed by his supervisor. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of September 2, 2005, reference 01, is affirmed. Jose Gomez is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjw