

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

AWO A KOWA
Claimant

APPEAL NO. 18A-UI-08320-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HORMEL FOODS CORPORATION
Employer

OC: 12/24/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Awo Kowa, (claimant) appealed a representative's July 26, 2018, decision (reference 01), that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Hormel Foods Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 24, 2018. The claimant participated personally. The employer was represented by Carolyn Karetis, Hearings Representative, and participated by Erin Montgomery, Human Resources Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 25, 2018, as a full-time skilled general worker. He signed for receipt of the employer's collective bargaining agreement and policies on April 25, 2018.

On or about June 19, 2018, the claimant signed for receipt of a disciplinary action report. A verbal warning was recommended by the supervisor because the claimant was late for work three days. The employer changed the start time of his shift and the claimant, as a new employee, did not know of the changes. Many new employees made the same mistakes. The warning did not indicate the claimant could be terminated for further infractions. The claimant was about ten minutes late on the day the warning was issued but that date was not included in the warning. On June 27, 2018, the claimant was one minute late for work. The employer excused the claimant's absences on May 10, 25, June 4, and 25, 2018.

On July 11, 2018, the claimant arrived at work at 1:00 p.m. He normally took his break at 3:45 p.m. His supervisor, James, asked him to work with another supervisor, Mike. Mike's employees took a break at 5:45 p.m. because they started work at 3:00 p.m. At 3:45 p.m., Mike told the claimant to put off his break until 5:45 p.m. and take his break with the rest of the group.

The claimant told Mike he could not do that because he had to use the restroom. Mike left and the claimant took his restroom break at 3:45 p.m. Mike returned and found the claimant had taken his break. Mike told the claimant he was supposed to wait and take the break at 5:45 p.m. The claimant told Mike again that he could not wait five hours to take a restroom break. He had to use the restroom at 3:45 p.m. Mike told the claimant to come to his office at 5:45 p.m. because he was going to write him up.

The claimant went to Mike's office at 5:45 p.m. but never saw a disciplinary action. The employer wrote a disciplinary action but did not present it to the claimant. It stated that the claimant did not follow instructions. The document stated that further infractions will result in discipline. No further infractions occurred. On July 17, 2018, the employer terminated the claimant because it felt the claimant was difficult and argumentative during his probationary period.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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). The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa App. 1985).

The supervisor told the claimant to wait an additional two hours to take his break. The claimant said he had to take his break so that he could go to the restroom. The supervisor's request was unreasonable. It is unreasonable to have an employee work for five hours without a restroom break. The claimant did not comply with the supervisor's instruction because he had to use the restroom. His noncompliance is not misconduct. The employer terminated the claimant because he reasonably requested to use the bathroom after three hours of work. The employer did not meet its burden of proof to show the misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's July 26, 2018, decision (reference 01), is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn