

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL F WARTHEN
Claimant

APPEAL NO. 09A-UI-15622-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS
Employer

OC: 09/20/09
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Michael Warthen, filed an appeal from a decision dated October 14, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 19, 2009. The claimant participated on his own behalf. The employer, West Liberty Foods, participated by Human Resources Manager Maria Bozaan and HRIS Administrator Anne Hocke. Exhibits One, Two and Three were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Michael Warthen was employed by West Liberty Foods from July 21, 2009 until September 24, 2009 as a full-time supervisor. He had received a verbal warning on September 3, 2009, for “communication” problems with another manager. On September 20, 2009, he received a formal written warning for failing to follow proper procedures.

On September 23, 2009, two employees notified their supervisor the claimant had been involved in a conversation with them regarding the union which was negotiating to represent workers at the plant. They alleged the claimant had spoken disparagingly of the company and in support of the union. The claimant is a salaried supervisor and as such, considered management. He had received training on how to handle issues regarding the union which was to support the employer’s position. He was not to start any conversation about the union and if an employee asked him questions to which he did not know the answer, he was to refer them to human resources.

The employees submitted written statements which the employer considered. On September 24, 2009, the claimant was discharged.

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 employer alleges the claimant spoke disparagingly of the employer and in support of the union. The statements from the employees, upon close reading, do not support this. The claimant testified the statement he made about the employees being "toyed with" were in reference to the union stating they would not be covered by the union agreement because they were supervisors. He said they would be exempt only if they were salaried.

It is not clear who was actually conducting the meeting about the union, the employer or representatives from the union. It appears from testimony Mr. Warthen thought the meeting had been conducted by the union and the union was "toying" with the workers by saying they would not be covered because they were supervisors. He told the employees they were hourly workers and could do what they wanted with the union.

The record does not support the employer's contention the claimant was speaking against the employer and in support of the union. Without a current, final act of misconduct which precipitated the discharge under 871 IAC 24.32(8), disqualification may not be imposed.

DECISION:

The representative's decision of October 14, 2009, reference 01, is reversed. Michael Warthen is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css