

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JODY A MCBETH
Claimant

WEST LIBERTY FOODS LLC
Employer

APPEAL 15A-UI-07980-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/21/15
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 9, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination the claimant was discharged for violating a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on August 6, 2015. Claimant, Jody McBeth, participated on his own behalf. Employer West Liberty Foods LLC participated through Human Resources Supervisor Monica Dyar. Employer's Exhibits One through Five were received..

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a mechanic beginning September 7, 2010, and was separated from employment on June 19, 2015, when he was discharged. The claimant worked overnight in the maintenance department and reported directly to Maintenance Supervisor C Crew Ken Huffaker. The employer allows its employees a 20-minute paid break, a 30-minute unpaid lunch break, and another 20-minute paid break per eight-hour shift. When going on break, the employees in the maintenance department are to log their breaks on L2L, a labor tracking program, and sign out with security if they leave the building.

The claimant was discharged for excessive breaks and loitering or wasting company time as outlined in the Code of Conduct. On June 9, 2015, Huffaker suspected that the claimant had taken a longer than allotted lunch break. He emailed Human Resources Representatives Jean Spiesz and Monica Dyar asking them to look into the claimant's breaks. He also noted that the claimant had not logged a single break in L2L for at least a month. Spiesz reviewed the surveillance footage and determined the claimant took a 26-minute paid break, 50-minute unpaid lunch, and a 34-minute paid break. He did not sign in and out of L2L or with the security guard. During the investigation, the claimant acknowledged he knew the proper procedure and the amount of time he was allotted for breaks.

The claimant had received previous warnings. On November 11, 2014, the claimant was suspended for lying down on a pallet for one hour and five minutes during his shift. This was described as loitering, wasting time, and taking excessive breaks. The employer laid out its expectation that the claimant was allowed only his allotted break time and, if he was done with his assignment, he was to immediately report back to his supervisor for another assignment. He was also put on notice that any further incidents would lead to additional discipline up to and including termination. On April 2, 2015, the claimant received a counseling report for leaving his shift early without notifying management.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code § 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.

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands.

Sellers v. Emp't Appeal Bd., 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The employer has presented substantial and credible evidence that the claimant continued to take excessive breaks and waste work time after having been warned. This is disqualifying misconduct. The claimant explained his conduct by citing personal reasons. However, he had paid time off if he needed to attend to his personal matters. Additionally, the employer had a history of working with him on different matters if he needed any form of accommodation. He did not proactively take those steps. The claimant's argument that everyone always wasted time is not persuasive. He was clearly directed to seek additional work if he was done with a project and he did acknowledge that there was likely, at a minimum, cleaning to be done. The employer also explained that other employees were disciplined for the same or similar conduct. Claimant's failure to adhere to his break times and not waste work time after having been warned is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. Benefits are denied.

DECISION:

The July 9, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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