

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS E LOUGHREN
Claimant

APPEAL NO: 08A-UI-01181-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TOMMY GHRIST
Employer

**OC: 12/30/07 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Nicholas E. Loughren (claimant) appealed a representative's January 29, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Tommy Ghrist (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 19, 2008. The claimant participated in the hearing. Tommy Ghrist appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on or about May 14, 2007. He worked full time as a farm hand. One of his regular duties was to see to the water and feed of the employer's 65 to 80 head of cattle and 24 horses, frequently working seven days per week.

In early December the claimant and Mr. Ghrist had some discussion regarding the claimant's schedule over the holidays. The claimant believed Mr. Ghrist understood that he was intending to be gone from the evening of December 29 until the evening of December 31 so that he would need to have someone else look in on the livestock on December 30. On December 23 the claimant was unexpectedly detained after going home (about three hours away) and did not get to work that day, but advised Mr. Ghrist so someone else could cover the livestock that day.

On about December 26 Mr. Ghrist discussed with the claimant his own plans on being gone from the state from about December 28 through January 7. During this discussion there a renewed mention of the claimant's plan to go home on the evening of December 29 and the cattle needing to be checked on December 30. The claimant assumed Mr. Ghrist still remembered that the claimant was not intending on returning until the evening of December 31 and so was indicating that he, Mr. Ghrist, would be having someone else check on the livestock

on December 30, whereas Mr. Ghrist meant that he expected the claimant to be back to check on the livestock himself on December 30 or that he, the claimant, would find someone else.

On the evening of December 30 Mr. Ghrist called the claimant on his cell phone on routine business and discovered that the claimant was still at his home and that no arrangements had been made to feed or water the livestock that day. Mr. Ghrist told the claimant that he would contact his sister to go look in on the livestock the next morning but that the claimant should head back to the farm the next morning. On December 31 the claimant left his home in the morning, but when Mr. Ghrist called him on his cell phone at approximately noon he was still a couple hours from the farm. At that point Mr. Ghrist told the claimant that he was discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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.

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 focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer’s interest, or
 2. The employee’s duties and obligations to the employer.

Henry, supra.

The reason cited by the employer for discharging the claimant is his failure to attend to the livestock on December 30 or make arrangements so that someone else could check on them that day. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra. The evidence here is that there was not a clear understanding between the claimant and the employer as to the expectations for December 30. Under the circumstances of this case, the claimant’s failure to realize the employer was still expecting him to be responsible for the livestock care on December 30 was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. While the employer had good business reason for discharging the claimant, it has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's January 29, 2008 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs