

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OSCAR SALAIS
Claimant

APPEAL NO. 09A-UI-10351-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

**Original Claim: 06/14/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated July 13, 2009, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on August 5, 2009. The claimant participated personally. The employer participated by Ms. Nickie Bruno, human resource generalist. Exhibits One through Four were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds: Oscar Salais was employed by West Liberty Foods from September 19, 2005, until June 16, 2009, when he was discharged for exceeding the permissible number of attendance infractions under company policy. The claimant was employed as a full-time cooler operator and was paid by the hour.

The claimant was discharged when he exceeded the permissible number of attendance infractions allowed under the company's "no fault" attendance policy. The claimant's last infraction took place when the claimant was required to leave work early due to illness. Mr. Salais properly reported the necessity to leave work and was granted permission to leave.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was discharged for no disqualifying reason.

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 has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App 1992).

The Supreme Court of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct. The court held that it must be excessive and unexcused. The court held that absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer.

The evidence in the record establishes the claimant's last attendance infraction was due to illness and properly reported. Under these circumstances, the claimant's separation from employment took place for no disqualifying reason. Benefits are allowed, provided the claimant meets all other eligibility requirements.

DECISION:

The representative's decision dated July 13, 2009, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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