

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODOLFO T PAGCU
Claimant

APPEAL NO. 13A-UI-02312-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARMOUR ECKRICH MEATS
Employer

OC: 01/27/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.1(113)a – Separations From Employment
Section 96.5-1 – Voluntary Leaving - Layoff

STATEMENT OF THE CASE:

Rodolfo Pagcu (claimant) appealed a representative's February 26, 2013 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was suspended from work with Armour Eckrich Meats (employer) for violation of company rules. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 25, 2013. The claimant participated personally. The employer participated by Jacque Huesman, Human Resources Manager.

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 July 13, 2004, as a full-time general laborer. The claimant received the employer's work rules. The employer issued the claimant one verbal warning for arguing. On January 24, 2013, the claimant and a co-worker were arguing. The claimant told the coworker not to enter his locker. Other workers told the employer that the claimant threatened to fight the coworker. The claimant did not threaten to fight the coworker.

Both the claimant and co-worker were suspended from working from January 25 through February 3, 2013. The claimant returned to work on February 4, 2013. The claimant was laid off for lack of work from February 11 through 25, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was suspended from employment 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(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

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). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but chose not to do so. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work for the two-week period ending February 23, 2013.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The employer laid the claimant off for lack of work for the two-week period ending February 23, 2013. When an employer suspends a claimant from work status for a period of time, the separation does not prejudice the claimant. The claimant's separation was attributable to a lack of work by the employer. The claimant is eligible to receive unemployment insurance benefits for that period.

DECISION:

The representative's February 26, 2013 decision (reference 01) is reversed. Claimant was suspended from employment without establishment of misconduct. Benefits are allowed, provided claimant is otherwise eligible. In addition, the claimant was laid off for lack of work after his suspension. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/tll