

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LOREN HARRINGTON
212 – 2ND ST NW
LE MARS IA 51031

WELLS DAIRY INC
PO BOX 1310
LE MARS IA 51031-1310

Appeal Number: 05A-UI-03469-CT
OC: 02/27/05 R: 01
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Loren Harrington filed an appeal from a representative's decision dated March 23, 2005, reference 01, which denied benefits based on his separation from Wells Dairy, Inc. After due notice was issued, a hearing was held by telephone on April 21, 2005. Mr. Harrington participated personally and offered additional testimony from Mary Valentine. The employer responded to the notice of hearing but the designated witness was not available at the number provided at the scheduled time of the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Harrington was employed by Wells Dairy, Inc. from December 15, 1975 until February 25, 2005. He worked full time in the cooler. He was discharged because of an incident that occurred at work on February 18, 2005.

On February 18, Mr. Harrington was in the break room when he told a coworker that his home had been broken into. The coworker began laughing, which caused Mr. Harrington to become upset. The plant manager took him into his office because he apparently felt something was wrong with Mr. Harrington. The particulars of what occurred in the plant manager's office are unknown as Mr. Harrington does not have a clear recollection of the incident. The employer alleged in its fact-finding statement that Mr. Harrington pushed a manager against the wall and was screaming obscenities at him. The police were called and transported Mr. Harrington to the hospital.

Mr. Harrington remained at the hospital for one week. He was on a locked ward at Mercy Hospital in Sioux City. In July of 2004, Mr. Harrington was diagnosed as schizophrenic and was prescribed medication. His condition had previously been controlled with medication. When he was hospitalized in February of 2005, his medication was changed and he now takes shots to control his condition.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Harrington was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The term "misconduct" connotes volition. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979). Mr. Harrington was discharged because of an incident at work in which he was alleged to have assaulted and verbally abused a manager. There was no evidence that he had a history of such conduct at work. The employer did not participate in the hearing to offer testimony concerning the specifics of what occurred and Mr. Harrington's recollection of the event is unclear. He was removed from the workplace by police and taken to the hospital where he was confined to a locked ward. Given Mr. Harrington's diagnosis of schizophrenia, the administrative law judge concludes that his conduct at work was, more likely than not, a result of his mental condition. Because of his mental state, he lacked the requisite volition required for a misconduct disqualification.

For the reasons stated herein, the administrative law judge concludes that disqualifying misconduct has not been established by the evidence. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed.

DECISION:

The representative's decision dated March 23, 2005, reference 01, is hereby reversed. Mr. Harrington was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/sc