

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH PAYE

Claimant

APPEAL NO: 14A-UI-03759-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

OC: 03/02/14

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 31, 2014, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 29, 2014. The claimant participated in the hearing. Nikki Bruno, Human Resources Supervisor; Kathy Truelson, Human Resources Manager; and Swight Ferguson, Safety Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time FP Utility worker for West Liberty Foods from June 3, 2013 to March 10, 2014. He was discharged for violating the employer's lock-out/tag-out policy.

On February 27, 2014, the claimant was setting up his equipment and Supervisor Robert Peck told Safety Manager Dwight Ferguson he failed to follow the employer's lock-out/tag-out procedures when doing that and working on an air line. The claimant was then suspended while the employer conducted an investigation, which consisted of taking statements from the claimant and witnesses and discussing the lock-out/tag-out procedures for that piece of equipment. All of that information was turned over to the lock-out/tag-out review board to make a determination on whether the claimant's employment should be terminated. On March 10, 2014, the employer notified the claimant his employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged 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(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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant denies violating the employer's lock out/tag out policy, even assuming he did so arguendo, this was, at worst, an isolated incident of misconduct. The claimant may have forgotten to follow the policy or believed he did follow it when in actuality he did not. Regardless, although failing to follow the employer's lock-out/tag-out procedure is a very critical omission, the claimant was aware that not doing so could cost him his life and took the policy very seriously. The claimant's failure to follow the lock-out/tag-out policy, a one-time occurrence, although misconduct, does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The March 31, 2014, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css