

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SIVONE SITHIDETH
Claimant

APPEAL NO. 09A-UI-00272-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 11/09/08 R: 04
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

West Liberty Foods, L.L.C. (employer) appealed a representative's January 2, 2009 decision (reference 01) that concluded Sivone Sithideth (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 22, 2009. The claimant participated in the hearing. Jean Spiesz appeared on the employer's behalf and presented testimony from one other witness, Drexel McCalvin. 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 July 31, 2006. Most recently she worked full time as a second-shift production supervisor in the employer's Mount Pleasant meat slicing and packaging facility. Her last day of work was November 4, 2008. The employer suspended her that day and discharged her on November 12, 2008. The reason asserted for the discharge was the employer's conclusion the claimant had violated the employer's lock-out/tag-out safety policy.

On November 4 one of the employee's under the claimant's supervision was working on the malfunctioning head gasket on a vacuum seal machine. The employee had already applied their lock to the machine. The claimant came by to check on the employee's work, and discussed the problem with the employee. At one point she pointed out something to the employee that was in the inside of the machine.

Another manager had suspected the employee had not properly done a lock-out/tag-out, so the employer pulled and viewed the video surveillance of the work area. From the camera angle to the machine, the employer concluded that the claimant's hand had passed beyond the surface of the machine and was to at least some degree inside the machine. The employer deemed

this a violation of the employer's lock-out/tag-out safety procedure, and therefore discharged the claimant. The claimant had not believed her actions to be in violation of the policy as she did not believe her hand had gone "into" the machine and did not consider pointing out something to be "working on" the machine so that she also was required to apply her lock. There had not been any prior disciplinary actions regarding the claimant.

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).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her failure to apply her own lock to the machine she was consulting with the employee. Under the circumstances of this case, the claimant's action was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer 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 2, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css