

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SIMON RODRIGUEZ
Claimant

APPEAL NO. 09A-UI-07373-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 10/26/08
Claimant: Appellant (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Simon Rodriguez filed a timely appeal from the May 12, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 8, 2009. Mr. Rodriguez participated. Monica Dyar, Human Resources Supervisor, represented the employer. Exhibits One and Two were received into evidence.

The Appeals Section had secured Spanish-English interpreter Ike Rocha for the hearing. The claimant demonstrated English proficiency during the hearing. The interpreter stood by to assist, but was not needed.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Simon Rodriguez was employed by West Liberty Foods as a full-time slicer operator from September 2003 until April 17, 2009, when he was suspended for failing to follow the employer's "lock-out/tag-out" procedure. Monica Dyar, Human Resources Supervisor, subsequently recommended Mr. Rodriguez's discharge and Mr. Rodriguez was discharged from the employment on April 23, 2009.

On April 17, Mr. Rodriguez decided to help a coworker work on a machine. The coworker was having difficulty unscrewing bolts from a blade. The coworker had followed the OSHA-mandated "lock-out/tag-out" procedure and had placed his padlock on the power source to prevent the power from being turned on while he worked on the machine. Mr. Rodriguez observed that the coworker had locked out the power supply. Mr. Rodriguez commenced working on the machine without placing his own padlock on the power switch to lock out the power supply. Mr. Rodriguez's padlock was at his workstation a short distance away. Just as soon as Mr. Rodriguez started assisting the coworker with the machine, Production Supervisor Thom Ford entered the area and noted that Mr. Rodriguez had not followed the

“lock-out/tag-out” procedure. Mr. Ford directed Mr. Rodriguez to report to the dining room area. Ms. Dyar interviewed Mr. Rodriguez and Mr. Ford and suspended Mr. Rodriguez from the employment.

Mr. Rodriguez had received proper training in the “lock-out/tag-out” procedure. Mr. Rodriguez knew the employer had a zero-tolerance policy regarding failure to follow the “lock-out/tag-out” procedure. Mr. Rodriguez had otherwise followed the procedure. The purpose of the “lock-out/tag-out” procedure was to prevent serious harm to employees in connection with work performed on workplace machines.

REASONING AND CONCLUSIONS OF LAW:

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 benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment 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).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination

of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence establishes that Mr. Rodriguez knowingly and intentionally failed to follow the employer's “lock-out/tag-out” policy on April 17, 2009. The policy was there to ensure Mr. Rodriguez's safety and protect him from serious injury. Mr. Rodriguez's failure to follow the policy constituted misconduct in connection with the employment that disqualifies him for unemployment insurance benefits. Mr. Rodriguez is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Rodriguez.

DECISION:

The Agency representative's May 12, 2009, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css