IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JUSTIN R WILLIAMS
Claimant

BEEF PRODUCTS INC
Employer

APPEAL NO. 09A-UI-08583-S2T

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 05/10/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Beef Products (employer) appealed a representative's June 11, 2009 decision (reference 01) that concluded Justin Williams (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 1, 2009. The claimant participated personally. The employer participated by Rick Wood, Human Resources Manager, and Jennifer Stubbs, Corporate Human Resources Benefits Supervisor. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on October 21, 2008, as a full-time laborer. The claimant signed for receipt of the employer's handbook on October 21, 2008. The claimant had little training and was learning on the job.

On November 23, 2008, the employer issued the claimant a written warning for having an empty pop bottle in his locker. The claimant used the bottle to fill with water when he went to break. The rule says that there can be no food, gum, or candy in an employee's locker. The claimant was unaware that he could not have an empty bottle or a bottle of water in his locker. On April 2, 2009, the employer issued the claimant a written warning for not wearing a beard net. The claimant thought that the rule said if you had hair that could be pulled by your fingers or hair longer than your eyebrows, you had to wear a beard net. The rule says that an employee must wear a beard net if an employee has more than one day's growth. On April 17, 2009, the employer issued the claimant a written warning for not supplying a doctor's note after three days of medical absence. The claimant asked several supervisors if he had to supply a note after three, five, or seven days. The supervisors did not know. On April 23, 2009, the claimant was issued a written warning for allowing too much product on a roller, causing the line to shut down.

The claimant did not think he had enough training. The employer notified the claimant on each warning that further infractions could result in termination from employment.

On May 12, 2009, the claimant failed to grease a seal. The seal came loose and the plant had to be shut down for some time. The seal went into the raw product. All pieces of the seal had to be found before starting production again. The claimant was told once in three months to grease the seal on the machine. He did not know when or how often to grease the seal. The employer terminated the claimant on May 12, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent.

The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of his lack of training. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's June 11, 2009 decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw