

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

WILLIAM J KEASLING  
920 S HANCOCK  
OTTUMWA IA 52501

EXCEL CORPORATION  
c/o FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-10607-SWT  
OC: 08/24/04 R: 03  
Claimant: Respondent (1)

**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, 4<sup>th</sup> 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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 16, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 21, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Adri Cobos participated in the hearing on behalf of the employer. Exhibits One, A, B, and C were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a technical services employee from February 6, 2001 to August 25, 2004. The claimant's job involved inspecting hog carcasses. The claimant had received a verbal warning July 10, 2003, for being away from his work station while the line was running. The claimant was on a scheduled break at the time. He received a written warning on July 15, 2003, for unsatisfactory job performance for not fully completing a

report. On November 24, 2003, he was given a written warning for being away from his workstation talking to production employees. The claimant did not leave his work area on that day and only spoke to production employees about necessary work-related matters. On December 4, 2003, the claimant was given a three-days suspension for allegedly failing to inspect carcasses that passed his workstation. On that date, the claimant was diligently inspecting the carcasses as they passed.

On July 13, 2004, the claimant received a verbal warning for not meeting company standards in using an instrument to gauge the fat content of hogs. The claimant performed the job to the best of his ability despite having never received formal training on the job.

On August 20, 2004, the claimant was suspended for allegedly allowing a carcass with cut on it to be routed to the export bay when it did not meet the inspection criteria for exported meat. The claimant performed the inspection job to the best of his ability and would have passed the carcass for the export bay if he had seen the cut.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

871 IAC 24.32(1)a, (8) provide:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. The evidence does not establish any willful and substantial misconduct by the claimant or repeated negligence that equals willful misconduct in culpability. The employer has not proven by the preponderance of the evidence that the claimant was responsible for allowing the scarred carcass to pass inspection for the export bay.

DECISION:

The unemployment insurance decision dated September 16, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kjf