

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RANDY L DURHAM**  
Claimant

**APPEAL NO: 09A-UI-04084-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**OC: 02/01/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Randy L. Durham (claimant) appealed a representative's March 4, 2009 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of West Liberty Foods LLC (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 8, 2009. The claimant participated in the hearing. Brent Ewing, the plant engineer, and Jean Spiesz, the human resource manager, appeared on the employer's behalf. During the hearing, Employer Exhibits One, Two and Three were offered and admitted as evidence. 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:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on March 10, 2008. The claimant worked as a full-time maintenance mechanic. At the time of hire, the claimant received a copy of the employer's handbook (Employer Exhibit One) which included the employer's rules of conduct. The handbook informed the claimant that the employer did not allow horseplay (Employer Exhibit Two) or harassment (Employer Exhibit Three) at work.

During his employment, the claimant and other mechanics pushed one another in a laundry cart for fun while they waited for an assignment. The claimant's co-workers had pushed the claimant around in a laundry basket. Sometime in November 2008, the claimant saw two mechanics put a production employee in a laundry cart and push him around. The production employee laughed along with the claimant and other mechanics.

The night before production employees were to go on a seven-day layoff, one of the mechanics hid the production employee's laundry cart throughout the night and C.G. and the production employee engaged in a physical confrontation. The production employee reported he had been

harassed by some mechanic employees. The employer began investigating the employee's complaint on January 19, 2009. When Ewing asked the claimant about the horseplay, he acknowledged he had been involved in the horseplay. The claimant denied he had physically put a production employee in a laundry cart. The production worker reported the claimant had been involved and C.G. reported the claimant helped put the production employee in the laundry basket.

On January 23, 2009, the employer suspended the claimant. After reviewing statements from employees, the employer concluded the claimant and C.G. actually harassed the production worker and violated the employer's harassment policy by physically putting the production employee in the laundry cart. The employer discharged the claimant on February 2009, for harassing an employee and committing horseplay at work.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Without C.G. or the production employee testifying that the claimant physically put the production employee in a laundry cart, the claimant's testimony that he did not do this is credible and must be given more weight than the employer's reliance on unsupported hearsay information. Therefore, the facts do not establish that the claimant harassed a production employee.

The claimant, however, admitted he was involved in horseplay and had been pushed in the laundry cart during work hours. Since the claimant violated the employer's horseplay policy, the employer established business reasons for discharging him. Without previous warnings, the claimant used poor judgment when he engaged in horseplay. The facts do not, however, establish that he intentionally or substantially disregarded the employer's interest. The claimant did not commit work-connected misconduct. As of February 1, 2009, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's March 4, 2009 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 1, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirement. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css