

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

WADE A BASSFORD
Claimant

APPEAL NO. 18A-UI-01503-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTAR FOODS INC
Employer

OC: 05/21/17
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Wade Bassford (claimant) appealed a representative's January 29, 2018, decision (reference 05) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Westar Foods (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 28, 2018. The claimant participated personally. The employer was represented by Tim Speir, Hearings Representative, and participated by Dan Keene, District Manager; Elvia Arroyo, Assistant Manager; and Crystal Gentry, Shift Manager. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 8, 2017, as a full-time crew member. The claimant received employer's online handbook. The policy states that if "you are absent without notifying the company, it may be assumed that you have voluntarily abandoned your position with the company and you may be terminated." The handbook lists as impermissible to be absent "for one or more consecutive work shifts without notice to" the manager.

On December 25, 2017, the claimant did not appear for his shift or notify the manager of his absence. He was absent because he forgot he was supposed to work that day. On December 26, 2017, the claimant walked into work with a document. He told the shift manager he wanted to take a week off but did not say which week he wanted to take off. The shift manager told the claimant to put the document in an envelope and leave it for the assistant manager. The assistant manager would be returning the first week in January 2018.

The claimant pinned the envelope to the assistant manager's board. Inside was a letter stating he needed to take the week off from December 25, 2017, to January 1, 2018, for legal and

familial reasons. No one saw the envelope after December 26, 2017. The employer never read the letter. The claimant did not speak with the assistant manager's supervisor or anyone else in management or human resources. He was absent without notice for his shift on December 27, 2017. On December 28, 2017, the employer terminated the claimant for being absent without notice on December 25 and 27, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions regarding reporting his absence. The claimant thought that by requesting time off, he did not have to report his absences. He requested time off but the leave had not been granted. Until it was granted, the claimant had to continue to report each absence. The claimant's disregard of

the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's January 29, 2018, decision (reference 05) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs