

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LARRY M HORTON**  
Claimant

**APPEAL NO: 10A-UI-09579-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AGRI STAR MEAT & POULTRY LLC**  
Employer

**OC: 06/06/10**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
Section 96.7-2-a(2) – Charges Against Employer’s Account

**STATEMENT OF THE CASE:**

Larry M. Horton (claimant) appealed a representative’s July 2, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Agri Star Meat & Poultry, L.L.C. (employer). After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was held on August 23, 2010. The claimant participated in the hearing. Laura Althouse appeared on the employer’s behalf. 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.

**ISSUES:**

Was the claimant discharged for work-connected misconduct? Is the employer’s account subject to charge?

**FINDINGS OF FACT:**

The claimant started working for the employer on February 25, 2010. He worked full time as a sanitation worker on the evening shift at the employer’s kosher slaughter and processing plant. His last day of work was June 9, 2010. The employer discharged him on that date. The reason asserted for the discharge was insubordination.

The claimant received a work-related injury, a chemical burn to his finger, while working on June 3. On June 8 he reported for work, clocking in and signing in at about 7:00 p.m. He then dressed in his work gear. However, during this process the claimant’s finger began to throb. He determined that as a result of the pain he was in, he could not perform his duties that night, and so removed his work gear and signed and clocked out. As he began to exit down the hall, a supervisor saw him and asked why he was leaving. The claimant responded that he was going home sick due to the injury. The supervisor then called over another foreman and asked the claimant the same question, but the claimant declined to further answer, as he felt he had already answered and was already “off the clock.” He was then escorted to the security desk and was told to report to human resources the next day. He did report as directed the next day;

after performing a few duties, he was summoned to the human resources office and told he was being discharged for insubordination for failing to answer the supervisor's questions in front of the other foreman.

The claimant established an unemployment insurance benefit year effective June 6, 2010.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his failure to reexplain his reason for leaving on June 8 after the supervisor summoned the other foreman. Under the circumstances of this case, the claimant's failure to reexplain his reason for leaving was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began January 1, 2009 and ended December 31, 2009. The employer did not employ the claimant

during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

**DECISION:**

The representative's July 2, 2010 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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