

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT J EATON

Claimant

APPEAL NO. 09A-UI-14549-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

OC: 08/16/09

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 18, 2009, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on October 26, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Monica Dyer participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a mechanic from March 30, 2009, to August 24, 2009. The claimant was informed and understood that under the employer's work rules, fighting, abusive language, and threatening conduct were grounds for termination.

On August 14, 2009, a coworker, Tony Sosa, asked the claimant if he was dating another employee. Sosa told the claimant to quit calling the woman because she was Sosa's girl. The claimant replied, "Fuck you. I'll fuck you up for worrying about my business." When Sosa said that he had been talking to the woman in question, the claimant responded, "I'll whoop your ass."

Later on in the shift, Sosa would walk by where the claimant was working and smile and blow him a kiss. Once when this happened, the claimant slapped the clipboard Sosa was carrying and knocked it to the floor.

The claimant was suspended pending investigation on August 14, 2009, and after the investigation and approval by the corporate office, he was discharged on August 24, 2009, for violating the employer's work rules against threatening conduct and abusive language.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. Although ten days past between the conduct and the discharge, this clearly was a current act because the claimant was suspended awaiting the outcome of the investigation. The claimant's defense was that Sosa should have been discharged too, but the unemployment law focus is on the claimant's conduct and whether it amounts to misconduct, not deciding if he was treated more harshly than a coworker was.

DECISION:

The unemployment insurance decision dated September 18, 2009, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css