

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL RIDEOUT**  
Claimant

**APPEAL NO. 08A-UI-01282-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEEF PRODUCTS INC**  
Employer

**OC: 01/06/08 R: 03**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Michael Rideout filed an appeal from a representative's decision dated January 29, 2008, reference 01, which denied benefits based upon his separation from Beef Products Inc. After due notice was issued, a hearing was held by telephone on February 20, 2008. Mr. Rideout participated personally. The employer participated by Mr. Rick Wood, human resource manager. Exhibit Number 1 was received into evidence.

**ISSUE:**

At issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from February 27, 2007, until December 27, 2007, when he was discharged from employment. Mr. Rideout was employed as a full-time maintenance worker and was paid by the hour.

The claimant was suspended from work pending an investigation into the claimant's failure to use a lockout/tagout device as required by company policy. Mr. Rideout had been previously specifically counseled by the employer about using lockout and tagouts and had been sent to re-training shortly before the final incident. During the final incident, the claimant had failed to use the required lockout device while performing service on a company machine. The claimant was specifically instructed to report back to work on December 27, 2007, at 8:00 a.m., and was informed that failure to report would result in his separation from employment. (Exhibit Number 1). Although the claimant received the written instruction regarding his temporary suspension and the requirement that he return to work on December 27, 2007, the claimant did not follow the instructions and was discharged when he failed to report as instructed. The employer considered the claimant had voluntarily relinquished his position by failing to report.

It is the claimant's position that he received a verbal instruction that he would be contacted by the employer and thus did not heed the written suspension or the notation on it. Mr. Rideout had signed an acknowledgement that he had received the suspension and the notation.

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

The question before the administrative law judge in this case is whether the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. It has.

The evidence in the record establishes that the claimant had been specifically warned and counseled about failing to use lockout devices that were required by company policy. In an effort to retain Mr. Rideout as a company employee, the company had given him additional re-training, but found the claimant in violation of the lockout requirement just a few days later. While the employer investigated the final incident, the claimant was placed on temporary suspension and specifically instructed to report back to work at 8:00 a.m. on December 27, 2007. Although Mr. Rideout signed a written acknowledgement of his suspension and the return day, he did not return as directed. Although the claimant did not desire to quit his employment, he was separated by the employer based upon his failure to report as directed and the most recent violation of the company's lockout procedures.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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.

For the above-stated reasons, the administrative law judge concludes that the employer has sustained its burden of proof in showing that the claimant had failed to follow lockout procedures and had failed to report back to scheduled work as instructed. This conduct showed a willful disregard for the employer's interests and standards of behavior and, thus, was disqualifying conduct under the provisions of the Iowa Employment Security Act.

**DECISION:**

The representative's decision dated January 29, 2008, reference 01, is hereby affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided he is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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