

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD E MUSUMHI**  
Claimant

**APPEAL NO. 17A-UI-06283-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OSCEOLA FOOD LLC**  
Employer

**OC: 05/14/17**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Richard Musumhi (claimant) appealed a representative's June 14, 2017, decision (reference 04) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Osceola Food (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 6, 2017. The claimant participated personally. The employer was represented by John O'Fallon, Hearings Representative, and participated by Roberto Luna, Human Resources Manager. The claimant offered and Exhibit A 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 August 29, 2016, as a full-time industrial maintenance electrician. The claimant signed for receipt of the employer's handbook on August 30, 2016. On November 21, 2016, the employer issued the claimant a written warning and four-day suspension for a lock-out/tag-out violation. The employer notified the claimant that further infractions could result in termination from employment.

On February 13, 2017, at 3:00 a.m., the claimant's supervisor, who is an engineer, told the claimant to change out the pressure transducer. This is a job that would normally take six to eight hours and the claimant's shift ended at 6:00 a.m. The supervisor told the claimant the exact locations of the connections so the job would take much less time. The claimant trusted the supervisor because he was an engineer. The claimant followed the supervisor's instructions and tested the work without power at the end of the job.

The following day the employer found the pressure transducer did not work. When the problem was fixed and everything was running correctly, the claimant noticed the employer had removed the new pressure transducer and replaced it with an old pressure transducer. The claimant wondered if the new pressure transducer had been the problem. The employer did not tell the

claimant what, if anything, the claimant did wrong. On February 21, 2017, the employer terminated the claimant for not following his supervisor's instructions.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present eye-witness testimony but chose not to do so. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's June 14, 2017, decision (reference 04) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/rvs