

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENIS O CHAVEZ
Claimant

APPEAL NO. 07A-UI-05936-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OSCEOLA FOODS CORPORATION
Employer

**OC: 05/20/07 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 4, 2007, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 22, 2007. Claimant participated personally and was represented by Steven Jayne, Attorney at Law. Employer participated by Judy Callahan, Human Resource Manager, Kelly Blanchard, Registered Nurse, Lance Burnette, Production Supervisor and Gary Sample, Human Resource Coordinator. Exhibits A and One were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 1, 2007.

Claimant was discharged on May 10, 2007 by employer because claimant falsified his employment application and employment application questions. Claimant was hired August 21, 2007. Claimant lied about having previously worked for a sibling company of employer. The falsification of prior employment did not impact the health, safety or morals of the applicant or others. It did not expose employer to legal liabilities.

Claimant also lied about being able to lift 50 pounds on August 16, 2007. Claimant generally had a 20-pound lifting restriction based on a functional capacity evaluation dated 2002. Claimant was put on a job that required 25 to 30 pounds of frequent lifting. Employer would not have placed claimant on that job had they known of the 20-pound lifting restriction. The lack of knowledge of work restriction by employer placed claimant in danger of re-injury.

Employer was aware of the falsification April 20, 2007 but did not suspend until May 1, 2007. Claimant was allowed to continue working until May 1, 2007. After obtaining all the information on the case, claimant was finally discharged May 10, 2007.

Claimant was informed that falsification of an employment application would result of discharge.

REASONING AND CONCLUSIONS OF LAW:

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.

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning falsification of an employment application. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because there is no current act of misconduct. Employer was aware of the falsification of work restrictions on April 20, 2007 but did not suspend claimant until May 1, 2007. Allowing claimant to continue to work for about 10 days makes this incident stale. There is no current act of misconduct for which to base a disqualification. While claimant did falsify his application in a manner that was dangerous to his health it is nonetheless too stale to constitute misconduct. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated June 4, 2007, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs