

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

JENNIFER J FINDLEY  
1048 BRUCE ST  
OTTUMWA IA 52501

CARGILL MEAT SOLUTIONS CORP  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166 0283

Appeal Number: 05A-UI-12044-DWT  
OC: 10/30/05 R: 03  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (employer) appealed a representative's November 17, 2005 decision (reference 01) that concluded Jennifer J. Findley (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 14, 2005. The claimant participated in the hearing. Mindy Hadley, an assistant human resource manager, 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.

ISSUE:

Did the employer discharge the clamant for a current act of work-connected misconduct?

#### FINDINGS OF FACT:

The claimant started working for the employer on November 28, 2002. On August 16, 2004, the claimant was promoted to a supervisory position. On June 7, 2005, the employer placed the claimant on a performance improvement plan because the employer was not satisfied with her work performance in her new position.

In early July, during the claimant's 30-day review, the claimant satisfactorily met 75 to 80 percent of the employer's goals or criteria. In early August, during her 60-day review, the claimant again met 75 to 80 percent of the employer's criteria. Some of the problems in the 60-day review were different than the problems addressed in the 30-day review. The employer was not satisfied with the claimant's progress at the 90-day review in September and gave her another 30 days to meet all the employer's criteria.

On October 17, 2005, the claimant was talking to another supervisor about some personal matters. When the claimant's supervisor walked in, he told her to stop because her conversation was not appropriate with production employees present. The employer did not allow supervisors to talk to production employees about any personal issues. The claimant had no idea any production employees could hear anything she told another supervisor.

On November 3, 2005, the employer discharged the claimant for unsatisfactory work performance. The employer discharged the claimant because she had not meet the 30, 60, 90-day work improvement plan the employer gave her on June 7, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharged her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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. 871 IAC 24.32(8).

The employer established compelling business reasons for discharging the claimant. The evidence does not establish that the claimant intentionally and substantially failed to perform her job satisfactorily. Also, evidence does not establish any current act that amounts to work-connected misconduct. For unemployment insurance purposes, the claimant did not commit work-connected misconduct. Therefore, as of October 30, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's November 17, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 30, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjw