

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JORDAN A JONES

Claimant

APPEAL NO. 10A-UI-05331-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

Original Claim: 03/14/10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jordan A. Jones (claimant) appealed a representative's April 5, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 27, 2010. The claimant participated in the hearing and was represented by union representative Brian Ulin. Jessica Sheppard 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 1, 2009. He worked full-time as a production worker on the second shift of the employer's Ottumwa, Iowa pork processing facility. His last day of work was March 12, 2010. The employer discharged him on that date. The reason asserted for the discharge was intentional destruction or devaluation of company property and interference with the business of production. Specifically, the employer contends he did so by throwing a work frock and mesh glove into the trash.

On March 10 the claimant left work at about 4:30 p.m. after being cleared to do so by his supervisor. He was upset at that time, as he had just learned he was not going to receive holiday pay for a day off because of some prior absences. As he left, he went to hang up his work frock on a hook near the exit. However, the frock fell off the hook and onto the floor, and the mesh glove that had been in the pocket of the frock fell out onto the floor. Since both the frock and the glove had hit the floor, they were contaminated from further use until cleaned. The claimant did not return to his work area and his own hook, as they were several hundred feet away from where he was near the exit. Therefore, he picked up the frock and glove and laid them over the top of the already full trash can, expecting that persons would realize that a frock and a mesh glove setting on top of a trash can were contaminated and would need to be

cleaned. He then removed his remaining gear, including a mesh apron, and hung them on nearby hooks.

Technical services did retrieve the frock and glove from on top of the trash can, and they were cleaned and returned to service; the claimant's department was charged for the retrieval. Due to this incident and the conclusion the claimant had intentionally tried to dispose of the frock and glove, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the assertion he intentionally threw the frock and glove in the trash. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant did intentionally attempt to destroy or dispose of the items, as compared to attempting to set them aside so that they could be retrieved but then cleaned. Under the circumstances of this case, the claimant's actions were the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, or were due to a good-faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's April 5, 2010 decision (reference 01) is reversed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw