

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADIL NABLI
Claimant

APPEAL NO: 11A-UI-09156-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 06-19-11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 12, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 3, 2011. The claimant participated in the hearing with Interpreter Yasin Sarayrah. Ben Wise, Hiring Supervisor, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Cargill Meat Solutions Corporation from July 20, 2009 to June 21, 2011. He was discharged for violating the employer's attendance policy after a last-chance agreement was put into place. The claimant had ten points effective January 28, 2011, and was placed on a last-chance agreement February 18, 2011. The claimant signed the agreement stating he could not have any additional absences or incidents of tardiness until November 18, 2011. The employer could not detail any of the claimant's absences that resulted in his ten points or the dates of his warnings. On June 20, 2011, the claimant arrived at 6:28 a.m. for his 5:45 a.m. shift. He left his car lights on the evening of June 19, 2011, and subsequently his car would not start when he went out to go to work June 20, 2011. A neighbor jump started his car and he went to work. The employer notified him that his employment was terminated effective June 21, 2011, for violating the attendance policy and last chance agreement. The claimant testified that eight of his ten points were accumulated due to illness.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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). Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Because the employer did not know the dates or reasons for the claimant's absences leading up to his receiving ten attendance points and the last chance agreement, the administrative law judge is left to consider the claimant's last incident of absenteeism which was his tardiness June 20, 2011. The claimant stated that at least eight out of his ten points were accumulated due to illness and the employer could offer no testimony to rebut that testimony. Under these circumstances, the administrative law judge concludes that although the claimant's tardiness June 20, 2011, was unexcused, there is not enough evidence to conclude the remainder of the claimant's absences were excessive and unexcused as required by Iowa law before a claimant may be disqualified for benefits. Therefore, benefits are allowed.

DECISION:

The July 12, 2011, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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