

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY G MCCOMAS

Claimant

APPEAL NO: 09A-UI-01122-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

**OC: 11/30/08 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Timothy G. McComas (claimant) appealed a representative's January 16, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Cargill Meat Solutions Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 18, 2009. The claimant participated in the hearing and was represented by union representative Brian Ulin, who also testified on behalf of the claimant. Alicia Alonzo 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 January 2, 2002. He worked full time as a production worker on cut floor on the second shift in the employer's Ottumwa, Iowa pork processing facility. His last day of work was December 1, 2008. The employer suspended him that day and discharged him on December 4, 2008. The reason asserted for the discharge was having a second serious safety violation in one year.

The employer gave the claimant a suspension on August 27, 2008 for an incident in which he and other employee came around a pillar at the same time from opposite directions and ran into each other. As the claimant is of large physical build and the other man was slight, the other man was bumped backwards. While there was no specific safety protocol at issue involved other than allegedly "inappropriate physical touching," the employer designated this as a first serious safety violation. Although the claimant disagreed with the discipline, the claimant's union representative at the time advised him that it would be best if he simply accepted the discipline, so he did.

Near the end of the shift on December 1 the claimant was starting to break down the loin pulling machine on which he had been working. He had removed one of the knives when a supervisor observed that he did not have his lock out/tag out on the machine, a serious safety violation. The claimant admitted that he had forgotten to do this, took care of locking out the machine, and finished tearing down the machine. However, he was then told to go home on suspension to await final word from the employer on the disciplinary action to be taken. As the employer concluded this was a second serious safety violation within a year, under the employer's policies it 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 which 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 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. 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 conclusion he had committed a second serious safety violation within one year. While the incident on December 1 was a serious safety violation, the employer has not established that the prior incident in August was such a similar circumstance so that the December 1 incident could be characterized as a second violation. Under the circumstances of this case, the claimant's failure on December 1 was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was 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 January 16, 2009 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/css