

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

JANICE K SIEVERS
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CLINTON IA 52732

ARCHER-DANIELS-MIDLAND CO
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-04290-BT
OC: 03/27/05 R: 04
Claimant: Appellant (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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Janice Sievers (claimant) appealed an unemployment insurance decision dated April 14, 2005, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Archer-Daniels-Midland Company (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 13, 2005. The claimant participated in the hearing. The employer participated through Bryce Albrechtsen, Human Resources Manager and Andrew Hardigan, Sugerhouse Superintendent. Employer's Exhibits One through Three were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time production operator from January 2, 2001 through March 29, 2005. Some safety rules are so serious that violations of such will or could result in the employee's termination. Due to the combustible materials and the exaggerated potential for explosions in the employer's facility, employees are only allowed to smoke in authorized areas. Violation of this policy could result in immediate termination and the employer has increasingly considered this a strict liability policy.

The claimant was discharged for smoking in an unauthorized area. On March 25, 2005 at approximately 8:00 p.m. in the ladies' restroom on the second floor in building 86, the claimant was smoking a cigarette. She was smoking in an unauthorized area. When confronted by her supervisor, Ron Heilweg, the claimant admitted smoking. The claimant and her supervisor were brought into Al Edfors' office and the claimant admitted in front of this supervisor also that she was carrying a lighter and was smoking. She further admitted she had smoked there several times. She was suspended and was specifically asked at that time whether she knew why she was being suspended and she admitted she did. The claimant met with Ricardo Campos, Andy Hardigan, and Bryce Albrechtsen on March 29, 2005 to discuss her termination. There was no question that the claimant was being discharged for smoking in an unauthorized area and she admitted to the employer she was smoking. She also discussed having a lighter and reported that other people had lighters but that was not the central issue to the employer. The employer issued the claimant a termination letter confirming the same information as what was discussed in the meeting.

The claimant now contends she did not know she was discharged for smoking in an unauthorized area and denies smoking. She admits carrying a lighter and contends that was why she thought she was fired.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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 Section 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 claimant was discharged for violating a serious safety policy by smoking a cigarette in an unauthorized area. She admitted she knew violation of the policy could result in her termination. At the time of the incident, she admitted in front of five separate witnesses that she was smoking in the ladies' restroom. During the hearing today and during the fact-finding interview, the claimant now contends she was not smoking.

However, the claimant's testimony is not credible. She initially testified that she admitted to the employer she was smoking in the restroom. She then stated the restroom was an authorized area because there were no signs. Shortly thereafter, the claimant denied she was smoking and claimed she thought she was getting discharged for having a lighter. She claims this even though she was involved in a discharge meeting with three other individuals in which the reason for her discharge was discussed. She later said she may not have heard the employer discussing her discharge for smoking because she was in shock. The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated April 14, 2005, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

sdb/s