

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SIRENA N LEACH**

Claimant

**APPEAL NO. 08A-UI-07448-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS  
CORPORATION**

Employer

**OC: 07/20/08 R: 03  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Cargill Meat Solutions Corporation (employer) appealed a representative's August 8, 2008 decision (reference 01) that concluded Sirena Leach (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 2, 2008. The claimant participated personally and through Tamara Rosales, former co-worker. The employer participated by Katie Holcomb, Human Resources Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on June 12, 2007, as a full-time production employee. The claimant signed for receipt of the employer's handbook on June 13, 2007. The employer issued the claimant warnings regarding absenteeism on December 29, 2007, and April 23, 2008. The claimant properly reported her absences for funerals, illness, and personal issues. The employer issued the claimant a second warning on April 23, 2008, for failure to properly swipe her card in and out. On April 26, 2008, the employer issued the claimant a written warning when she requested a different union steward, even though the request was covered by the union contract.

On July 15, 2008, the claimant injured her wrist at work. She went to the nurse and the nurse gave her ibuprofen and an ice pack. The nurse returned the claimant to work without completing any paperwork on the claimant's condition. The claimant asked her supervisor if she could perform light duty, but the supervisor could not authorize the change or seek approval from his superior.

On July 16, 2008, the claimant returned to work and could not hold on to her knife. She dropped it repeatedly and almost cut herself. She looked for her supervisor for 30 to 45 minutes

before asking a co-worker to take her position. As she was preparing to leave, she saw her supervisor and told him she was leaving due to her condition. Later, the human resources manager directed the supervisor to call the claimant to ask about her condition.

On July 17, 2008, the claimant properly reported her absence for personal reasons. On July 18, 2008, the claimant returned to work. The employer terminated her for walking off the job without notice to her supervisor.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer testified that the claimant left without notice and later testified that it instructed the supervisor to call the claimant about her notice of leaving early. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's August 8, 2008 decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw