

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RODOLFO IBARRA**  
Claimant

**APPEAL NO. 10A-UI-00358-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**  
Employer

**Original Claim: 12/13/09  
Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated January 6, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 18, 2010. The claimant participated. The employer participated by Jessica Sheppard, human resources. The record consists of the testimony of Jessica Shepherd; the testimony of Rodolfo Ibarra; and Employer's Exhibits 1 through 8. Anna Cox served as Spanish interpreter for the claimant.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a meat processing plant located in Ottumwa, Iowa. The claimant was hired on April 6, 2002, as a production worker. He was terminated on December 15, 2009. The reason for his termination was that he urinated on the locker room floor and in a trash can.

The claimant told Alicia Alonzo, who investigated the matter, that he did urinate in the trash can. He gave a different version of events at the hearing. He was going to urinate in the trash can, but then realized it was wrong and went to the toilet instead.

**REASONING AND CONCLUSIONS OF LAW:**

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The definition of misconduct excludes good-faith errors in judgment or discretion or inadvertencies or ordinary negligence in isolated instances. The employer has the burden of proof to show misconduct.

The evidence on whether the claimant actually urinated on the locker room floor and trash can is controverted. No one who actually witnessed the event testified at the hearing, although the record contains statements from other employees and results of an investigation that was conducted by human resources. The claimant admitted at the time of the investigation that he had urinated in the locker room. He retracted this statement at the hearing and said that he was going to urinate, but then realized it would be wrong and went to the toilet instead. His explanation for his admission at the time of the investigation was that he was nervous.

The administrative law judge cannot determine for certain whether the offensive act occurred, but there is evidence that the claimant did urinate on the floor and the trashcan. Even if that event occurred, however, what the claimant did was more akin to an isolated instance of poor judgment as opposed to a deliberate violation of a specific company work rule. The work rules did prohibit urination outside on company property, and common sense would dictate that urination should be done in a toilet as opposed to a trash can. However, a single isolated event does not meet the statutory definition of misconduct. Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated January 6, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

---

Vicki L. Seeck  
Administrative Law Judge

---

Decision Dated and Mailed

vls/kjw