

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS L CASTEEL
Claimant

APPEAL NO. 12O-UI-09507-WT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 2/5/12
Claimant: Appellant (2R)

Section 96.5-2-a – Discharge/Suspension for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a fact-finding decision dated March 21, 2012, reference 01, which held claimant ineligible for unemployment insurance benefits. An original hearing was held on this matter on April 18, 2012. On April 20, 2012, Judge Timberland found claimant's appeal untimely. On August 7, 2012, the Employment Appeal Board remanded this case for a hearing on the merits. After due notice, a telephone conference hearing was scheduled for and held on October 8, 2012. Claimant participated through Attorney Phil Miller. Employer participated by Angie Stevens, H.R. Generalist.

ISSUE:

The issue in this matter is whether claimant was suspended for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

Claimant was suspended without pay on January 10, 2012 by employer due to an investigation into a harassment complaint. The claimant was off work on unpaid leave from January 10, 2012 to March 2, 2012. On March 3, 2012, claimant was returned to work and eventually received all of his back pay except two days, March 10-11. The employer presented no credible evidence of misconduct at hearing.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was suspended for an act of misconduct when claimant was placed on involuntary leave for a harassment investigation.

Nevertheless, the facts demonstrated claimant was ultimately paid back pay for all but two days of the leave. Based upon Iowa Code section 96.3(8), it does not appear that any benefits are due claimant. The matter is remanded to the Claims Section for a determination of whether any benefits are due.

DECISION:

The fact-finding decision dated March 21, 2012, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements. This claim, however, is remanded for specific determination of whether claimant is due any benefits due to the application of Iowa Code section 96.3(8).

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/css