

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAMON D WHITE

Claimant

APPEAL NO. 11A-UI-15707-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

OC: 11/06/11

Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Cargill, filed an appeal from a decision dated December 2, 2011, reference 01. The decision allowed benefits to the claimant, Damon White. After due notice was issued a hearing was held by telephone conference call on January 10, 2012. The claimant participated on his own behalf, with Joe Rush and was represented by Brian Uling. The employer participated by Hiring Supervisor Ben Wise.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Damon White was employed by Cargill from August 3, 2009 until November 10, 2011 as a full-time production worker. On November 4, 2011, Operations Associate Josh Manternach e-mailed Assistant Human Resources Manager Sara James and accused Mr. White of threatening him. He alleged the claimant had passed through an area which was taped off for cleaning and when told not to do that again Mr. White said, "I will fuck you up."

Ms. James investigated by speaking with two other witnesses who confirmed the allegation and submitted written statements. When he was interviewed the claimant denied making the statement. He was discharged on November 10, 2011, by Ms. James for threatening a co-worker.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case the only witness for the employer had no firsthand knowledge of any kind regarding the incident. The written statements from the witnesses were not submitted, Ms. James, who did the investigation, did not testify and the complainant, Mr. Manternach, did not testify.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of December 2, 2011, reference 01, is affirmed. Damon White is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs