

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTION W BAYERS
Claimant

APPEAL NO. 10A-UI-01648-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

**Original Claim: 12/27/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated January 20, 2010, reference 01, which denied benefits based upon his separation from Cargill Meat Solutions Corporation. After due notice, a telephone hearing was held on March 25, 2010. The claimant participated personally. Participating as a representative for the claimant was Mr. Joe Rush, president United Food and Commercial Workers Local 230. Although duly notified, the employer did not respond to the notice of hearing and did not participate.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Christian Bayers was employed by Cargill Meat Solutions from February 4, 2003, until December 28, 2009, when he was discharged from employment. Mr. Bayers worked as a full-time maintenance worker and was paid by the hour.

The claimant was discharged when the company believed that Mr. Bayers had violated its strict policy against the use of tobacco products on the production floor. A company superintendent observed a wad of used chewing tobacco in a waste receptacle in the company's maintenance area. The superintendent believed that Mr. Bayers had violated the company's policies because the claimant was in the area and had tobacco residue on his teeth. Mr. Bayers had previously been warned for violating the policy.

The claimant did not engage in chewing tobacco on the company's production floor. Mr. Bayers had recently returned from a break period during which he'd used chewing tobacco in a designated area. The claimant did not return to the production floor and violate the company's rules by continuing to use the tobacco product. Mr. Bayers was subsequently reinstated by the company.

REASONING AND CONCLUSIONS OF LAW:

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992). Allegations of misconduct 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. See 871 IAC 24.32(4).

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.

In this matter, the claimant participated personally and provided sworn testimony denying that he had violated company rules. The claimant has provided sufficient explanation of the circumstances that led to his discharge from employment. Intentional misconduct in connection with the employment has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated January 20, 2010, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw