

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS R SPURGEON

Claimant

APPEAL NO. 100-UI-16334-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

OC: 07/04/10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.6-2 – Burden of Proof

STATEMENT OF THE CASE:

Douglas R. Spurgeon filed a timely appeal from an unemployment insurance decision dated August 4, 2010, reference 01, that disqualified him for benefits. Due notice was issued for a telephone hearing to be held September 27, 2010. Mr. Spurgeon did not respond to the hearing notice. The administrative law judge issued a decision on the record on September 28, 2010 in Appeal No. 10A-UI-11320-H2T. Mr. Spurgeon filed an appeal with the Employment Appeal Board which, in a decision dated November 23, 2010 remanded the case for further proceedings. After due notice was issued, a telephone hearing was held first on January 20, 2011 with additional testimony on February 1, 2011. Mr. Spurgeon participated on his own behalf. Assistant Human Resources Manager Sara James participated for the employer. Employer Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Douglas R. Spurgeon was employed by Cargill Meat Solutions Corporation from March 19, 2008 until he was discharged July 6, 2010. He last worked as a maintenance mechanic. On July 2, 2010, Mr. Spurgeon and several co-workers were going to break. A co-worker lost his balance and fell down a flight of stairs. Written statements taken from all of the co-workers indicated that the fall was an accident. Further investigation by the company lead it to the conclusion that Mr. Spurgeon had kicked the co-worker after the co-worker had fallen.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct. It does not.

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. See Iowa Code § 96.6-2. Ms. James, the sole witness for the employer, acknowledged that all she knew of the case were the notes from the investigation. The investigator was not called as a witness. The investigator's notes are significantly different from the written statements of the participants which were also admitted into the record. Mr. Spurgeon's sworn testimony was consistent with his written statement that the fall was accidental and that he did not kick his co-worker. His testimony did not change under cross-examination.

To meet its burden of proof, the employer must establish by a preponderance of the evidence that Mr. Spurgeon deliberately kicked the co-worker. The employer specified that Mr. Spurgeon had been discharged for violating the company's violence prohibition. It did not assert that he was discharged for horseplay. While it is possible that the investigator's notes and conclusions are an accurate reflection of the events, the claimant's version is equally plausible. Based upon the evidence in this record, no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated August 4, 2010, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs