IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MATTHEW T FREESE
Claimant

CARGILL MEAT SOLUTIONS CORP
Employer

APPEAL NO: 09A-UCX-00013-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/29/09
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (employer) appealed a representative's May 15, 2009 decision (reference 01) that concluded Matthew T. Freese (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for non disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 30, 2009. The claimant participated in the hearing. Rachel Watkinson, a human resource associate, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 19, 2009. The employer hired him to work as a full-time production employee. The employer only allows a probationary employee to accumulate two attendance points during probation. As of March 9, the claimant had accumulated 3.5 attendance points.

The claimant properly reported he was ill and unable to work on February 9, 10 and 11, and received one attendance point for these days. The claimant had to leave work early on March 2. The night before the claimant told the employer he would have to leave at 9:00 p.m. instead of working until midnight, because the next morning he had to leave at 5:00 a.m. for a guard drill. The claimant received a half point for leaving work early on March 2. The claimant received another half point for reporting to work late on February 25.

On March 9, the employer offered the claimant a last chance agreement because he had accumulated 3.5 attendance points. The agreement indicated the claimant could not accumulate any more attendance points until September 9, 2009. The claimant signed the agreement.

The evening of March 23, the claimant told the employer he would be late for work the next day. The claimant's sergeant told him to resolve an issue with a bank in Iowa City the next day. On March 24, the claimant went to Iowa City as his sergeant had directed him to do and was 15 minutes late for work. Since the claimant was late for work, the employer planned to give him a half attendance point and discharge him. After the claimant explained that his sergeant had directed him to resolve a banking issue, the employer told the claimant to bring a statement by March 31 verifying that his sergeant had instructed him to go to the bank to resolve a banking issue. Within three or four days, the claimant obtained a handwritten note from his sergeant verifying she had directed him to the bank. The statement also indicated the date and time the claimant had been at the bank. When the claimant presented the note to the employer, management said a handwritten note was not acceptable. The employer wanted a typed statement. To provide a typed statement, the claimant had to have the commander sign the statement. To obtain a typed request took longer than the employer's March 31 deadline.

When the employer did not have a typed statement on March 31 verifying the claimant had gone to the bank upon his sergeant's directive, the employer discharged the claimant for violating the last chance agreement by reporting 15 minutes late on March 24, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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(8).

The employer established business reasons for discharging the claimant. The claimant's most recent attendance incident, reporting late on March 24, does not amount to work-connected misconduct. The night before, the claimant told a manager he would late for work the next day and why. Since the claimant is in the reserves, he must follow directives from his sergeant. His sergeant told him to go to his bank in Iowa City to resolve a banking issue. As a result of taking care of the banking issue, the claimant was 15 minutes late for work on March 24. The employer considered this a violation of the last chance agreement the claimant entered into on

March 9. Even though the claimant provided a written statement from his sergeant as the employer had requested on March 24, the claimant's manager would not accept the handwritten statement. Instead, the employer then told the claimant he needed to provide a typed statement by March 31. The claimant was unable to obtain a typed statement by March 31 because only the commander can sign a typed statement.

The facts indicate the claimant did not intentionally fail to work as scheduled. He provided the requested note to excuse the fact he reported to work late on March 24 but the employer for an unexplained reason would not accept the sergeant's handwritten note. The employer's request for a typed statement was not reasonable when that had not been required on March 24. The facts do not establish that the claimant committed work-connected misconduct. Therefore, as of March 29, 2009, the claimant is qualified to receive benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's May 15, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of March 29, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs