

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRIS RYAN**  
Claimant

**APPEAL NO. 09A-UI-14731-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**  
Employer

**Original Claim: 09/06/09  
Claimant: Respondent (1)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 24, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 28, 2009. Claimant Chris Ryan participated personally and was represented by Brian Ulin of the United Food and Commercial Workers International. Alicia Alonzo, Human Resources Generalist, represented the employer. Exhibits One through Nine and A were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Chris Ryan was employed by Cargill Meat Solutions as a full-time production worker from March 2008 until September 9, 2009, when Supervisor Tony Schwab suspended him for unsatisfactory work performance. On September 14, 2009, Sarah James, Assistant Human Resources Manager, discharged Mr. Ryan from the employment for unsatisfactory work performance.

Mr. Ryan worked on the kill floor. From August 2008, Mr. Ryan was assigned to a “hog open” position. Mr. Ryan’s hog opening duties had three components. Mr. Ryan had demonstrated proficiency in only one of the three components of the job. Mr. Schwab had disqualified Mr. Ryan from the opening position in April 2009 due to Mr. Ryan’s inability to proficiently perform all three parts of the position. After Mr. Ryan was disqualified from the opening position, he tried unsuccessfully to bid into a different position. Mr. Schwab decided to keep Mr. Ryan in the opening position despite his limited ability in performing those duties.

During the last year of the employment, the employer issued four reprimands to Mr. Ryan based on errors he made in performing the hog opening duties.

## 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.

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 benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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 Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly

be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976). The administrative law judge notes that the employer failed to present any testimony from persons with personal knowledge of the conduct or events that led to Mr. Ryan's suspension or discharge from the employment. The employer had the ability to present more direct and satisfactory evidence, but elected not to.

The weight of the evidence indicates that the employer discharged Mr. Ryan for unsatisfactory work performance. The work performance issues were attributable to Mr. Ryan's inability to perform the duties proficiently, rather than willful conduct on the part of Mr. Ryan. The evidence fails to establish misconduct in connection with the employment. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Ryan was discharged for no disqualifying reason. Accordingly, Mr. Ryan is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Ryan.

**DECISION:**

The Agency representative's September 24, 2009, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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