

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VLADIMIR A ROSADO
Claimant

APPEAL NO. 07A-UI-05826-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 05/13/07 R: 03
Claimant: Respondent (2)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (Cargill) filed an appeal from a representative's decision dated June 4, 2007, reference 01, which held that no disqualification would be imposed regarding Vladimir Rosado's separation from employment. After due notice was issued, a hearing was held by telephone on June 28, 2007. Mr. Rosado participated personally. The employer participated by Melissa Skinner, Assistant Human Resources Manager. Suzanne Jaquez participated as the interpreter.

ISSUE:

At issue in this matter is whether Mr. Rosado was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Rosado was employed by Cargill from November 1, 2004 until May 14, 2007 as a full-time production worker. On Saturday, May 12, 2007, he was told that his line would not be taking a lunch break so that work could be completed in six hours and workers could leave early. Pursuant to the collective bargaining agreement under which Mr. Rosado worked, the employer is required to provide a meal break after 5.5 hours unless the work will be completed in six hours. The collective bargaining agreement is provided in both English and Spanish. The work rules are posted in both English and Spanish.

The supervisor went to each line member to advise that they were not to take a meal break on May 12. However, Mr. Rosado went to lunch at his usual time. When questioned, he indicated he knew he was not to take a lunch break. He did not advise the employer of any factors that required him to eat when he did. He was among five individuals who went to lunch rather than working through the meal period as instructed. The above matter was the sole reason for Mr. Rosado's May 14, 2007 discharge.

Mr. Rosado filed a claim for job insurance benefits effective May 13, 2007. He has received a total of \$1,962.00 in benefits since filing his claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Rosado was discharged for disregarding a reasonable directive from his supervisor. Inasmuch as the work rules are printed in both English and Spanish, Mr. Rosado knew or should have known that he would not be entitled to a meal break if work was going to be completed in six hours or less. He knew the supervisor's plan was to have work completed in six hours on May 12. Mr. Rosado took a meal break in spite of his supervisor's instruction that he not do so.

The failure to follow a supervisor's instructions does not constitute misconduct if the failure or refusal is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768 (Iowa App 1982). Mr. Rosado did not establish any justification for his failure to follow his supervisor's instructions. Although he testified that he had to eat when he did because of gastritis, he did not advise the employer that his condition required him to eat. His actions, and that of his four coworkers, caused the employer to have to shut down his line. The administrative law judge concludes that Mr. Rosado's failure to obey his supervisor's instructions for no justifiable reason constituted a substantial disregard of the standards the employer had the right to expect. For the reasons cited herein, it is concluded that misconduct has been established and benefits are denied.

Mr. Rosado has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated June 4, 2007, reference 01, is hereby reversed. Mr. Rosado was discharged by Cargill for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Rosado has been overpaid \$1,962.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs