

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCO A FLORES

Claimant

APPEAL NO. 07A-UI-10890-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

**OC: 10/07/07 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (employer) appealed a representative's November 14, 2007 decision (reference 01) that concluded Marco A. Flores (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 11, 2007. The claimant participated in the hearing. Katie Holcomb, the human resource manager, appeared on the employer's behalf. Oliver Koch interpreted the hearing. 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 June 1, 2005. The claimant worked full time. On January 30, 2006, the claimant became an animal handler, which involved tattooing animals. The employer requires all animal handlers to treat animals humanely.

The morning of October 11, 2007, during a team meeting, the claimant and his co-workers were told the tattooed numbers were hard to read so they needed to put the tattoo instrument on the hog harder or if necessary place more than one tattoo on the hog. During his employment, the claimant sometimes noticed blood on hogs after they had been tattooed. When the claimant mentioned this to a supervisor, the claimant understood that blood on a hog after it had been tattooed was not a problem.

On December 11, an USDA inspector observed the employer's procedure. During this time, the USDA inspector watched the claimant tattoo hogs. Although no one said anything to the claimant, the USDA inspector reported to the employer that the claimant used excessive force on the hogs when he tattooed them. The USDA inspector concluded that the claimant did not treat the hogs humanely.

The claimant understood he could not use excessive force on hogs. Although the claimant denied using excessive force when the employer talked to him about the USDA representative's report, he signed a paper that may have indicated he admitted using excessive force. When the employer told the claimant to sign a paper, he did not protest and signed the paper. The claimant did not believe he used excessive force when he tattooed hogs that day. He may have pushed the tattoo instrument on the hog's skin with more force than usual and he may have tattooed hogs more than once because of what the employer told him during the morning meeting. The claimant denied using excessive force or that he mistreated any animal that day. When the employer investigated, employees who worked with the claimant wrote statements indicating the claimant used excessive force on the hogs that day.

Even though the claimant had not been talked to or warned about the way he handled hogs prior to October 11, the employer discharged him for the way he reportedly treated hogs on October 11, 2007.

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 § 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).

When the employer made the decision to discharge the claimant, the employer talked to the USDA representative and to employees who worked with the claimant. Based on these reports, the employer concluded the claimant used excessive force on animals and discharged him for this offense. At the hearing, the employer only relied on reports or statements from people who did not testify at the hearing. The employer's reliance on hearsay information cannot be given as much weight as the claimant's testimony. As a result, the claimant's testimony is reflected in the findings of fact. A preponderance of the credible evidence does not establish that the claimant used excessive force on the hogs on October 11, 2007. Based on the facts presented during the hearing, the claimant did not commit work-connected misconduct. As of October 7, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's November 14, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. AS of October 7, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw