

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WARREN VIZER
Claimant

APPEAL NO: 10A-UI-10856-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 07/04/10
Claimant: Respondent (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (employer) appealed an unemployment insurance decision dated July 28, 2010, reference 01, which held that Warren Vizer (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 22, 2010. The claimant participated in the hearing with union representative Clay Rush. The employer participated through Jessica Sheppard, Human Resources Associate. Employer's Exhibits One through Six were admitted into evidence. 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:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time maintenance employee from February 1, 2010 through July 6, 2010 when he was discharged for providing a false statement to the employer about an incident that occurred on July 3, 2010. An employee fell down the stairs on June 3, 2010 and was hurt. The claimant and another employee witnessed the incident. The claimant provided a written statement that two of his co-workers fell down the stairs and one was hurt.

The employer had a surveillance camera which recorded the incident. The claimant was advised of the recording and then questioned again as to what he witnessed. The claimant told Katie Holcomb, Human Resources Manager, that the injured co-worker was kicked and pushed in the hallway. When Supervisor Dominic Humbee questioned the claimant as to why he was not truthful, the claimant said that it was dumb and should not have happened.

At the hearing, the claimant contends he wrote an accurate statement about the incident.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 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 claimant was discharged for providing a false statement about an incident he witnessed. He denies providing a false statement and the two employer representatives who questioned him did not participate in the hearing. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. Id. There is insufficient evidence to prove the claimant intentionally wrote a false statement. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated July 28, 2010, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs