

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MIGUEL GONZALEZ
325 WILDWOOD DR
OTTUMWA IA 52501-3741

CARGILL MEAT SOLUTIONS CORP
c/o TALK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-01433-CT
OC: 01/15/06 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Miguel Gonzalez filed an appeal from a representative's decision dated February 3, 2006, reference 01, which denied benefits based on his separation from Cargill Meat Solutions Corporation (Cargill). After due notice was issued, a hearing was held by telephone on February 23, 2006. Mr. Gonzalez participated personally and was represented by Brian Ulin, United Food and Commercial Workers Local #230, who offered additional testimony from Mike Larkin. The employer participated by Erica Black, Human Resources Associate. Patricia Cervantes participated as an interpreter.

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. Gonzalez was employed by Cargill from October 14, 2003, until January 17, 2006, as a full-time utility worker. He was discharged after he was observed smoking and urinating in the shower room.

Mr. Gonzalez was in the shower area of the locker room smoking on January 16, 2005. He knew that the area was not a designated smoking area. He acknowledged during the hearing that he had smoked in the area on prior occasions. He was also observed urinating in the shower stall while smoking on January 16. As a result of the above observations, Mr. Gonzalez was suspended on January 16 and notified of his discharge on January 17, 2006. The above matter was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Gonzalez was separated from employment for any disqualifying reason. 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. Gonzalez was discharged for urinating in a shower stall and smoking in an unauthorized area. He admitted that he was smoking but denied that he was urinating in the shower stall. The fact that the shower stall was dry one hour later does not establish that he was not urinating. There was a drain in the shower stall. Other stalls were wet because they had been used for showers. One would not expect as much moisture and puddling in a stall where one has urinated as compared to one used for showering.

Mr. Gonzalez' conduct in smoking in an unauthorized area is sufficient, standing alone, to constitute disqualifying misconduct. He knew his actions were prohibited but smoked in the shower area in spite of this knowledge. His actions were without justification. The employer had the right to expect that employees would honor the restrictions as to areas where they could smoke. Mr. Gonzalez' deliberate violation of a known work rule constituted a substantial disregard of the standards the employer had the right to expect. For the reasons cited herein, benefits are denied.

DECISION:

The representative's decision dated February 3, 2006, reference 01, is hereby affirmed. Mr. Gonzalez was discharged for misconduct in connection with his employment with Cargill. 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.

cfc/kjw