IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JACOB BIERY
Claimant

CARGILL INCORPORATED
Employer

APPEAL NO: 16A-UI-11510-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/18/16
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 14, 2016, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 8, 2016. The claimant participated in the hearing. Brandi Kinkade, Human Resources Coordinator; Rod Lynch, Supervisor; and Jennifer Rice, Employer Representative; participated in the hearing on behalf of the employer. Employer's Exhibit 1 was admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time engineer for Cargill Incorporated from May 19, 2014 to June 22, 2016. He was discharged for using profanity in a written report.

The claimant was a shift manager and was scheduled to work from 7:00 p.m. to 7:00 a.m. As a shift manager he was required to produce a daily morning report. He gathered information by calling different departments while sitting at his computer and composing his notes. He generally transcribed exactly what was said to him and tried to edit his notes before submitting them to the employer. The technicians often use profanity in providing the information to the claimant for his report. On June 19, 2016, a technician told him the task of the night/day was "starting up distillation without blowing the motherfucking place up" (Employer's Exhibit 1). The claimant typed what was said to him intending to change it to "started up distillation" (Employer's Exhibit 1). He did not change it in "real time" like he typically did and after completing that call he proceeded to call the next department and the next after that until he was finished with the phone calls. After the conclusion of the phone calls the claimant quickly scanned the report looking for typographical errors, insuring the numbers updated, "looking for continuity in the main bodies of the departments' notes" and making sure the content was correct. He forgot he quoted the technician's profanity and did not notice it when quickly proofreading the report. He then sent the report, which went to 541 employees and top management in Minneapolis, to the

employer. When the claimant was getting ready to go in for his June 19, 2016, night shift, the employer called him about the report and notified him that he was suspended effective immediately. The claimant did not realize he left that language in when sending the report until the employer told him June 19, 2016. On June 22, 2016, the employer notified the claimant his employment was terminated. The claimant had not received any prior verbal or written warnings and his termination from employment was based solely on the issue of the profanity in the report.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *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 substantial and 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).

While the claimant certainly made an error in transcribing the profanity used by the technician when providing information to the claimant for his morning report, he simply forgot that language was still in the report. The claimant did not intentionally enter that language with the goal of leaving it in the report when it was distributed but rather transcribed what was said to him. Obviously the claimant should have done a better job of proofreading what he did put in the report. That said, however, given there were no prior verbal or written warnings, the claimant's actions constitute an isolated incident of poor judgment and as such do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The October 14, 2016, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

_____
Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/rvs