

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN SANER**  
Claimant

**APPEAL NO: 13A-UI-03676-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTION CORPORATION**  
Employer

**OC: 03/03/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 25, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 1, 2013. The claimant participated in the hearing with Brian Ulin, Full-Time Union Representative. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**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 production worker for Cargill Meat Solutions from March 25, 2005 to March 8, 2013. On March 5, 2013, the claimant's co-worker, Derek Harland, began throwing meat at him from three or four positions away from the claimant, hitting him in the face. The claimant told Mr. Harland to stop four times and he refused to do so and hit the claimant in the face again. At that point the claimant walked a few feet down the line and grabbed Mr. Harland by the smock and told him to, "Knock it off," Mr. Harland smiled, and both went back to work. The claimant did not shake or strike Mr. Harland. There were no supervisors around at the time of the incident and neither man wanted to complain to management about the situation as they were friends and did not wish to get each other in trouble. On March 8, 2013, the claimant was taken to the office and his employment was terminated for grabbing Mr. Harland's smock. Mr. Harland received a three day suspension. The claimant had not received any verbal or written warnings during at least the last year of his employment.

**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 section 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 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).

The claimant walked a few feet down the line and grabbed Mr. Harland by the smock after Mr. Harland repeatedly threw meat at the claimant's face despite numerous requests from the claimant that he stop doing so. The claimant and Mr. Harland were friends and the claimant knew if he simply grabbed Mr. Harland's smock he would understand the claimant did not wish to engage in the horseplay Mr. Harland was trying to start. The claimant did not shake or strike Mr. Harland; however, even if they did not wish to get each other in trouble it would have been advisable for the claimant to seek the help of a supervisor rather than touching another employee, regardless of whether the parties were friends. While the claimant should have sought the counsel of a supervisor, the claimant had not received any previous verbal or written warnings during at least the last year, and this incident was at best an isolated incident of misconduct.

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proving disqualifying job misconduct. Therefore, benefits are allowed.

**DECISION:**

The March 25, 2013, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css