

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ED R ZIMMERMAN
Claimant

APPEAL NO. 11A-UI-10220-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL KITCHEN SOLUTIONS INC
Employer

**OC: 07/03/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cargill Kitchen Solutions (employer) appealed a representative's July 27, 2011 decision (reference 01) that concluded Ed Zimmerman (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 29, 2011. The claimant participated personally. The employer participated by Travis Harpenau, Plant Superintendent, and Nancy Troe, Human Resources Generalist.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on October 21, 2001, as a full-time pasteurized team member. The claimant signed for receipt of the employer's handbook on August 19, 2009. The employer did not issue the claimant any warnings during his employment.

On June 22, 2011, the claimant went to the locker room to put his tools in the locker. The claimant's co-worker told the claimant he would take the sanitizer level for the claimant. The claimant said that would be fine and the co-worker exited the locker room. The claimant went back into the plant area to take care of a couple of tasks. The claimant went into the locker room and clocked out prior to changing into street clothes. The claimant considered that the co-worker would be in another area and not take the sanitizer level at the appropriate time. The claimant went back into the plant and took the sanitizer level. The claimant went to the locker room, changed into street clothes and left.

On June 23, 2011, the employer terminated the claimant for inappropriate documentation. The employer thought the claimant left at 4:08 p.m. and the test could not have been performed until after that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. In this case the claimant clocked out and then performed more work. Inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's July 27, 2011 decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs