

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIAN J WILLIAMS**

Claimant

**APPEAL NO: 18A-UI-02808-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL INCORPORATED**

Employer

**OC: 02/11/18**

**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a decision of a representative dated February 26, 2018, (reference 01) which denied unemployment insurance benefits finding that the claimant was discharged from work on February 12, 2018, for excessive unexcused absenteeism or tardiness after being warned. After due notice, a telephone hearing was scheduled for and held on March 28, 2018. Claimant participated. Employer participated by Mr. Josiah Miles, Department Supervisor and Ms. Rachel Friederes. Employer's Exhibits 1 through 5 were admitted into the hearing record.

**ISSUE:**

Whether the claimant was discharged for work connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds: Brian J. Williams was employed by Cargill Incorporated from November 30, 2015 until February 12, 2018, when he was discharged from employment. Mr. Williams worked as a full-time operations technician, and was scheduled to work from 6:45 a.m. until 7:00 p.m. on a rotating schedule. Claimant's immediate supervisor was Josiah Miles.

Mr. Williams was discharged from his employment with Cargill Incorporated after he violated the terms of a "Last Chance" disciplinary agreement that he had entered into with the company on January 23, 2018. (See Employer Exhibit 5).

Under the terms of the agreement, Mr. Williams was placed on a strict probation period for six months. Mr. Williams was subject to discharge if he had a non-approved, non-protected absence from work during the six months that followed the date of the agreement. Mr. Williams had been given his first attendance coaching on March 14, 2017, after he accumulated three absence occurrences within the preceding 12 months. On April 18, 2017, Mr. Williams was

given a documented verbal warning for attendance violations after he had accumulated an additional occurrence. On July 31, 2017, Mr. Williams was placed upon an attendance corrective action plan after he had accumulated his fifth attendance occurrence. The claimant was warned at that time that he would be required to provide documentation for any additional absences, late arrivals, or leaving early, and Mr. Williams was required to personally notify his supervisor about any occurrences. The claimant was also provided the names of specified management to contact if he was not able to reach his supervisor. The claimant was warned that failure to contact his immediate supervisor or designated management would not be acceptable and that leaving emails or voice mail messages would not suffice and would subject the claimant to any disciplinary actions.

The company utilizes a "occurrence" system that generally defines an occurrence as any unexcused absence, late arrival, or leaving early. The policy does not define a number of occurrences that result in termination of employment. The company uses a case by case review by management to determine whether an employee's absence, tardiness, or leaving work early should be considered as an occurrence. The company factors in things such as the employee's past attendance history, length of employment, and the employee's general standing in the company. The company uses progressive discipline in administering the policy, and to keep employees informed of the status of their occurrences and of the company's future job expectations.

The final incident that resulted in the claimant's discharge from employment took place on February 11, 2018. Mr. Williams was to begin work at 6:45 a.m. that morning. At approximately 1:00 a.m., on the early morning hours of February 11, 2018, Mr. Williams telephoned the shift leader on the overnight shift, and Mr. Williams stated that he would be arriving to work late for his 6:45 a.m. shift but would be in by approximately 10:00 a.m.

The claimant had noted at approximately 10:00 p.m. the preceding evening that there was a problem with the hinges on the entry door of his residence. He called the shift leader of the night shift at 1:00 a.m. after he had been unable to fix the door. On the morning of February 11, 2018, Mr. Williams arose at 8:00 a.m. and after securing the door, he reported to work at 10:30 a.m., four hours after his shift had begun. Because the claimant failed to directly notify his supervisor or any of designated management about his impending absence, and had not secured approval to be late or absent in advance, the late arrival was unexcused and in violation of the last chance agreement that Mr. Williams entered into the company one month before.

It is the claimant's position he notified a "shift leader" of his impending late arrival and that his late arrival did not impact company production in a negative way because there was sufficient other workers on duty to cover in his absence.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes work connected misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

In discharge cases the employer has the burden to prove the claimant was discharged for work connected misconduct as defined by the Unemployment Insurance Law. See *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In order for a claimant's absences to constitute misconduct that would disqualify a claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. The determination whether absenteeism is excessive necessarily requires consideration in past acts and warnings. The evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IA C24.32(a). Absences related to personal responsibility such as

transportation or over sleeping are unexcused. Absences related to illness are considered excused provided the employees comply with employer's policy regarding notifying the employer of the absence. Tardiness and leaving early are forms of absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes that Mr. Williams did not follow the terms of the last chance agreement or the employer's attendance policy in connection with his late arrival on February 11, 2018. The agreement required personal contact with Mr. Williams supervisor but the claimant did not contact his supervisor, instead he called the shift leader on the over-night shift at 1:00 a.m. to report that he would be coming to work late the next morning. Claimant also did not follow the company policy with respect to a determination whether there was adequate staffing to excuse the absence. The decision as to whether the employer's facility was properly staffed is a management decision and not left to hourly employees to determine. The claimant's personal belief that there were sufficient other worker is not a determinative of whether the employer considered his attendance infraction to be excused by the company.

The administrative law judge concludes based on the evidence in the record that the employer has sustained its burden of proof in establishing that the claimant was discharged for excessive unexcused absences, and that the claimant had been properly warned prior to being discharged.

Based upon the evidence in the record, the application and the appropriate law, the administrative law judge concludes that Mr. Williams was discharged for work connected misconduct. Accordingly the claimant is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

**DECISION:**

The representative's unemployment insurance decision dated February 26, 2018, reference 01 is affirmed. Claimant was discharged for work connected misconduct. Unemployment insurance benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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