

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY GROSHONG
Claimant

APPEAL NO. 08A-UI-07859-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 08-10-08 R: 03
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 27, 2008, 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 September 16, 2008. The claimant participated in the hearing with Union Representative Brian Ulin. Sarah James, Human Resources, participated in the hearing on behalf of the employer.

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 August 16, 2004 to August 11, 2008. Around April 2008 the employer began using a Kronos time clock in the production area and employees were required to use it every time they left their area. There was no adjustment or break-in period for use of the new system and several employees had problems and were written up when they swiped their cards and it did not show up. The claimant received a verbal warning April 26, 2008, for failure to swipe his Kronos card before taking a break to use the restroom. He received a written warning May 2, 2008, for the same thing and was suspended for three days beginning May 16, 2008, for the same thing. The claimant talked to his supervisor about the problem August 9, 2008, and his supervisor told him to do whatever it took to keep his job. The claimant knew he would face termination upon another infraction, so he intentionally did not swipe his card when going to use the restroom August 11, 2008, because he feared it would not work and he would lose his job; but when the employer learned he missed a swipe and did so intentionally, it terminated his employment August 11, 2008. The claimant received 11 attendance warnings during his four years of employment with Cargill.

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). While the claimant had problems with the Kronos machine, so did several other employees, and it appears there were some bugs that needed to be worked out. The claimant's supervisor told him to do whatever it took to keep his job because he had received a verbal warning, written warning, and suspension, and consequently the claimant did not use the machine when he went to use the restroom August 11, 2008. Although not condoning the claimant's actions, his fear that the machine would not work correctly and he would face termination was not altogether unreasonable. Under these circumstances, the administrative law judge cannot conclude that the claimant's behavior was willful misconduct as much as it was an attempt to keep his job because he was afraid the machine would not work correctly. Therefore, benefits are allowed.

DECISION:

The August 27, 2008, reference 01, decision is reversed. 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/kjw