

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAIME RODRIGUEZ-CORRAL**  
Claimant

**APPEAL NO: 12A-UI-02767-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CSD INC**  
Employer

**OC: 02-05-12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 15, 2012, 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 April 4, 2012. The claimant participated in the hearing. Brian Niehues, Production Manager and Dan Pate, Vice-President, 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 exterior/mill operator for CSD from April 19, 2010 to February 2, 2012. On April 28, 2011, the claimant received a written warning and two-day suspension after he and a co-worker decided to “prank” another employee as an April Fool’s joke April 1, 2011, by calling the other employee’s wife and saying he was not at work when actually he was working. The other employee’s wife panicked and called his parole or probation officer and the other employee was eventually arrested and required to move into a residential work release center. On June 23, 2011, the claimant received a written warning for excessive cell phone usage. Employees were allowed to have their cell phones on the production floor if they kept the phones in their pocket. After the claimant’s warning the employer changed the policy and prohibited cell phones on the production floor. On June 24, 2011, the claimant received a written warning and one-day suspension for failing to correctly wear his safety glasses which then fell off his head and into a conveyor, damaging the glasses and contaminating the feed. On October 27, 2011, the claimant received a verbal warning for being ten minutes tardy without calling the employer to report he would be late. On December 14, 2011, he received a written warning for violation of the employer’s call in policy. The claimant arrived two hours late for his scheduled shift after calling his supervisor and stating his wife was having car problems and he would be in within one to one and one-half hours and did not call back to tell his supervisor he would be later than first expected. On February 2, 2012, the claimant contaminated a large batch of pet food produced by the employer by putting the feed in

the wrong bin, contaminating \$4,000.00 worth of product. The claimant was busy that night but accepts responsibility for his error. He was aware his job was in jeopardy due to his previous warnings. The claimant was capable of performing the job to the employer's expectations and did so on a consistent basis in the past but was careless February 2, 2012. The employer's disciplinary policy states employees will first receive a verbal warning and retraining on the issue that caused the warning; two written warnings; a suspension; and then termination will result. The employer gave the claimant four written warnings and two suspensions because it wanted to try to work with him and keep him as an employee but following the final incident it decided to terminate the claimant's employment.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 claimant received two extra written warnings and one extra suspension which extended his employment and put him on notice his job was in jeopardy. With the exception of the prank pulled on another employee, the safety violation and the final incident, the other issues were fairly minor but still counted as violations of the employer's policy. The claimant was an experienced mill operator but mixed feed February 2, 2012, which contaminated it and cost the employer \$4,000.00. While there is no evidence that his conduct was intentional, it was

careless, and that incident combined with the claimant's previous five warnings constitutes disqualifying job misconduct. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

**DECISION:**

The March 15, 2012, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css