

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS E WEISS

Claimant

APPEAL NO. 07A-UI-08374-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

**OC: 07/22/07 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 21, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 17, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Brian Ulin. Melissa Skinner participated in the hearing on behalf of the employer. Exhibits One, Two, and A were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from September 14, 2006, to July 27, 2007. The claimant was informed and understood that under the employer's work rules, leaving company property without permission during normal scheduled working hours was grounds for termination.

The claimant was scheduled to work from 5:00 a.m. to 1:30 p.m. on July 25, 2007. There was a practice on the line where the claimant worked that persons were allowed to leave the line on a rotating basis to take a bathroom break and that the last person to be let out from the line would not return to the production line if it was close to quitting time. The claimant had done this before and had observed other workers do this as well. No one was ever counseled or warned about this practice. On July 25, 2007, the claimant punched out from work at 1:26 p.m. and left the plant without permission from a supervisor and while the line was still running. He left due to the practice regarding the worker who was let out from the line last.

The claimant was off work due to legitimate medical reasons with proper notice to the employer on July 26, 2007. When he returned to work on July 27, 2007, he was discharged by the employer for violation of the work rule about leaving work early without permission.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. The claimant left work four minutes early. He had not been previously warned about this issue. He was following a practice that he and other workers had followed in the past without being disciplined.

DECISION:

The unemployment insurance decision dated August 21, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs