

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODOLFO MADRID-TORRES
Claimant

APPEAL NO: 10A-UI-01728-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 01/03/10
Claimant: Respondent (2/R)

Section 96.5-2-a- Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's January 25, 2010 decision (reference 01) that allowed the claimant benefits and held the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on March 15, 2010. The claimant participated in the hearing. Jessica Sheppard, a human resource associate, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 7, 2008. The claimant understood the employer had a drug-testing policy and could ask employees to take a drug test. The employer's policy informs employees that the employer does not allow employees to work under the influence. Also, the employer may ask an employee to submit to a drug test if the employer has reasonable suspicion the employee is under the influence at work.

On December 24, a supervisor, not the claimant's supervisor, smelled alcohol on the claimant. The claimant's supervisor acknowledged that he smelled alcohol on the claimant also. The employer asked the claimant to submit to a drug test and escorted the claimant to the medical office for the test. The claimant was nervous when he was in the medical office and declined to submit to the drug test. The claimant acknowledged that he may have smelled of alcohol because he had gone out the night before and drank some alcoholic beverages.

After the claimant declined to submit to the drug test, the employer took him to the human resource department. The claimant again refused to take a drug test. The claimant made the comment that the employer was not the police and he was not going to take a drug test. The employer discharged him for violating the employer's drug testing policy by refusing to take a drug test that the employer asked him to take.

The claimant established a clam for benefits during the week of January 3, 2010. He has filed for and received benefits since January 3, 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew the employer's policy stated the employer could ask an employee to submit to a drug test. On December 24, 2009, the employer established reasonable suspicion that the claimant was working while under the influence. Pursuant to the employer's drug policy, the employer asked the claimant to submit to a drug test. The claimant declined. The claimant had been drinking with a friend the night before and admitted a couple of supervisors could have smelled alcohol on him. Even though the employer took the clamant to the medical office so the claimant could take the drug test, the claimant refused to do this. Even though the claimant was nervous, he made the decision to decline the requested test. This is supported by his comment in the human resource office that the employer was not police and he would not be tested. The claimant violated the employer's drug policy. For unemployment insurance purposes, the claimant committed work-connected misconduct by refusing to take the requested drug test. As of January 3, 2010, the claimant is not qualified to receive benefits.

The issue of overpayment or whether the claimant is eligible for waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's January 25, 2010 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 3, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured

work, provided he is otherwise eligible. The employer's account will not be charged. An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs