

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ESAD BEGIC

Claimant

APPEAL NO. 08A-UI-04921-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

**OC: 03/30/08 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (employer) appealed a representative's May 13, 2008 decision (reference 01) that concluded Esad Begic (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 23, 2008. The claimant participated in the hearing with his attorney, Philip Miller. Lori Elliott, an assistant human resource manager, appeared on the employer's behalf. Sanel Terzic interpreted the hearing. 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 June 7, 2004. The claimant worked as a full-time production employee. The employer's attendance policy informs employees that if they accumulate ten attendance points within a rolling calendar year, the employer will discharge the employee. If employees call within 30 minutes of a scheduled shift to report they are unable to work as scheduled, the employee receives one point. If employees do not call or report to work as scheduled, they receive two points.

During the claimant's employment, he received a written oral warning on February 18, 2008. The warning informed the claimant he had accumulated five attendance points. On March 15, the employer gave the claimant a written warning because he had accumulated eight attendance points.

Prior to March 2008, the claimant had a workers' compensation injury. Although the claimant had surgery and was released to return to work, he had encountered problems again. In mid-March, the claimant told his immediate supervisor, Rod Hoselton, he had an appointment on April 1, 2008 for an IME, an independent medical exam. Hoselton told the claimant the

April 1 absence was not a problem. The claimant understood that after he talked to his supervisor, his April 1 absence was excused and he was not required to call the employer on April 1 to report he would not be at work.

On March 31, 2008, Miller faxed a note or letter to the employer's workers' compensation adjuster verifying the claimant had an IME in Des Moines on April 1 and the claimant should not receive any attendance points for this absence. It is not known when the insurance adjuster forwarded this information to the employer's workers' compensation coordinator, Janelle. Janelle, however, noted that the claimant had not called in or should have reported to work at 5:00 a.m. and then gone to his noon appointment.

The employer assessed the claimant two points for the April 1 absence. Since this then gave the claimant ten attendance points, the employer discharged him on April 2, 2008.

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 § 96.5-2-a. 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 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).

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).

This case is an example of a straight forward case. The employer discharged the claimant because he violated the employer's no-fault attendance policy by accumulating ten points in a rolling calendar year. Based on the employer's assessment of points, the employer established business reasons for discharging the claimant. Although the employer did not consider the April 1 absence excused, the evidence establishes the claimant informed his immediate supervisor about the doctor's appointment two weeks prior to the appointment and reasonably believed the April 1 absence was excused. Since his supervisor indicated his absence on April 1 for the doctor's appointment was not a problem, the claimant also reasonably believed he was not required to call the employer before his 5:00 a.m. shift that day. Based on the facts presented during the hearing, the claimant did not commit work-connected misconduct. Therefore, he is qualified to receive unemployment insurance benefits.

Although the claimant's attorney objected to various rulings made during the hearing, the parties must remember that any conclusion or final order made by this decision is binding only upon the parties to proceedings brought under Iowa Code § 96.5 and is not binding upon the parties to

any other proceeding or action involving the same facts brought by the parties. Iowa Code § 96.6-2(4).

DECISION:

The representative's May 13, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of March 30, 2008, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css