

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOEY ISETON
Claimant

APPEAL NO: 06A-UI-08853-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS
Employer

OC: 07/23/06 R: 03
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 22, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 19, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Stephanie Wares. Erica Bleck participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as an operator from April 11, 2005, to March 2, 2006. In February 2006, the claimant began having problems with asthma and pneumonia for which he received treatment from a doctor. The claimant stopped working at the advice of his doctor. He notified his employer about his medical problems and provided a doctor's excuse. Later, his condition was diagnosed with chronic lung disease, which required surgery. His doctor recommended that he work in a clean air job free of dust, chemicals, fumes and temperature extremes (he was to work in temperatures between 50 to 80 degrees).

The claimant regularly contacted the employer and informed the employer about his medical status, including providing a doctor's statement. He received benefits under the employer's sickness and accident insurance program until June 1, 2006. He was told that he should bid on jobs that were suitable and he did so.

On May 25, 2006, the employer discharged the claimant for being absent for work without notice to the employer. The claimant was never informed that he needed to notify the employer each day during the time period he was off work.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

No willful or substantial misconduct has been proven in this case. The employer alleged the claimant was absent without notice to the employer, but it is clear that he was in contact with the employer. He was receiving sick and accident payments that required him keep in contact with the employer and provide proof of his medical status.

DECISION:

The unemployment insurance decision dated August 22, 2006, 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/cs