

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRADLEY BRUGGENWIRTH
Claimant

APPEAL NO: 11A-UI-07087-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARCHER-DANIELS-MIDLAND CO
Employer

OC: 04-24-11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 19, 2011, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 22, 2011. The claimant participated in the hearing. Bryce Albrechtsen, Human Resources Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three were admitted into evidence.

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 production operator on the switch crew for Archer-Daniels-Midland from September 25, 2006 to April 29, 2011. On April 18, 2011, the claimant stepped in gluten meal, a glue like powdery, very foul smelling, substance, that is used in making dog food. He tried to scrape it off his boots before entering the north guard shack for his break about 40 minutes later. Two co-workers went directly to the guard shack and were inside when the claimant came in from trying to clean the gluten meal off his boots. The claimant went into the restroom with a cup and scraped some of the material off his boots and returned to the break area outside the guards' room and poured it in front of the garbage can. He went back to the restroom and got a rag and then went back to the break area and threw the rag on the chunk of gluten meal on the floor. He dug another chunk out of his boot and then used his boot on top of the rag to wipe up the mess in front of the garbage can. He then threw the rag and cup into the garbage can, which he now admits he should not have done because of the odor, and returned to work. He testified his actions were "dumb" and "boneheaded" but stated he was not trying to cause any harm or make anyone sick. After he and his co-workers left the two guards came out to see what was causing the foul smelling odor. The employer has a video of the incident and it showed the two guards looking for the source of the odor and eventually emptying the garbage can. One guard had to leave her post, returned, and had to leave again because the odor was so strong it was making her feel sick. The other guard

mopped the floor. After the employer became aware of the incident it investigated the situation, reviewed the video, and met with the three employees present, including the claimant. The claimant was then suspended April 26 and 27, 2011, and was scheduled to be off work April 28, 2011. The employer terminated the claimant's employment April 29, 2011.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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 of proving disqualifying misconduct. 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 claimant's actions were definitely inappropriate and unprofessional, his testimony that he did not intend to cause any harm to others or make anyone else ill appeared sincere and credible. He admits his actions were "dumb" and "boneheaded" and that he should have taken the substance to the garbage can outside. He did disrupt the guards, although he was not aware of that at the time,

and a non-employee who was leaving the premises. While not condoning the claimant's actions, the administrative law judge must conclude this was an isolated incident of poor judgment on the part of the claimant and as such does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The May 19, 2011, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs