

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM R HILLIARD
Claimant

APPEAL NO. 09A-UI-04290-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

**Original Claim: 11/30/08
Claimant: Appellant (2)**

Section 96.5-2 – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the representative's decision dated March 4, 2009, reference 01, that held him not eligible to receive unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on April 13, 2009. The claimant participated personally. The employer participated by Alicia Alonzo, human resource generalist.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds: The claimant worked for this employer from May 16, 2007, until November 28, 2008, when he was discharged. Mr. Hilliard was employed as a full-time production worker and was paid by the hour. The claimant was discharged when the company believed that he had violated a work rule by throwing meat. The claimant denied the allegation at the time it was made by his immediate supervisor and denied the allegation at the time of hearing.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits. It does not.

The evidence in this case is based solely on hearsay. Mr. Hilliard appeared personally and provided sworn testimony specifically denying violating the company rule. Although hearsay is admissible in administrative proceedings, it is not accorded the same weight as sworn, direct testimony. The administrative law judge finds the claimant to be a credible witness and finds that his testimony is not inherently improbable. No first-hand witnesses were brought forward by the employer to substantiate the employer's allegations.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence

than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

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.

For the reasons stated herein, the administrative law judge finds that the employer has not sustained its burden of proof in establishing disqualifying misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 4, 2009, reference 01, is reversed. The claimant was dismissed under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw