

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARRY L ALBRIGHT SR
Claimant

APPEAL NO. 07A-UI-00917-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS
Employer

**OC: 10/15/06 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 12, 2007, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 12, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Katie Dierks participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from November 20, 2006, to December 6, 2006. He was informed and understood that under the employer's work rules, falsification of company records was grounds for discipline.

When the claimant was hired, he completed a pre-employment physical questionnaire. He answered "no" to the question asking him whether he had ever had blackouts, fainting spells, or seizures. The claimant has been treated by a neurologist for migraine headaches and occasional episodes of twitching in his arms in the past. The doctor believes the tremors are related to his migraines not a seizure disorder. The episodes do not involve any loss of consciousness. The neurologist has prescribed drugs used for myoclonic seizures, a condition involving muscle tremors, even though he was not diagnosed with a seizure disorder. The claimant answered the question "no" because he did not believe he had any condition that fell under the category of blackouts, fainting spells, or seizures.

On November 29, 2006, the claimant began experiencing problems with pain in his shoulder. He reported the discomfort to the company nurse. When the nurse prescribed ibuprofen, the claimant explained why he was unable to take ibuprofen. In doing so the claimant reported the medication that he was taking. He reported the drugs he was taking that are used for myoclonic seizures.

On December 6, 2006, the employer discharged the claimant for falsifying his preemployment medical questionnaire.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

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.

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 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).

No willful and substantial misconduct has been proven in this case. The claimant truthfully answered the questions on the questionnaire. The medical statement provided to the claimant establishes that he has not been diagnosed with any seizure disorder.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated January 12, 2007, reference 02, 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/pjs