

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM L JOHNS
Claimant

APPEAL NO. 09A-UI-05523-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

**Original Claim: 03/15/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from representative's decision dated April 2, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 5, 2009. The claimant participated personally. The employer participated by Alicia Alonza.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: The claimant was discharged on March 13, 2009 after he was discovered urinating on the shower at work. The claimant admitted this. The shower area is not near the cold floor or food processing area and employees must go through a hand and boot sanitizer before coming into contact with the food processing area. The employer had received complaints from USDA inspectors that the shower room was smelling of urine. The employer removed the urinals from the shower room. The claimant had not been warned and there were no signs prohibiting such activity. The claimant was aware of general sanitation policies for working at the plant.

REASONING AND CONCLUSIONS OF 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.

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).

In this matter, the evidence established that the claimant was discharged for an act of misconduct when the claimant violated the employer's policy concerning sanitation. The fact that food may not have been exposed to urine does not mean that other employees would not have been exposed to urine. The conduct of the claimant was a substantial disregard of the conduct an employer has a right to expect. Exposing employees to bodily fluids is a health hazard.

The administrative law judge holds that the claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The representative's decision dated April 2, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/kjw