

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

GREG R CARTER  
116 DELIER ST  
NORTH SIOUX CITY SD 57049

DAKOTA COLD STORAGE  
C/O BPI  
891 TWO RIVERS DR  
DAKOTA DUNES SD 57049

RICHARD STURGEON  
PO BOX 3372  
SIOUX CITY IA 51102

Appeal Number: 04A-UI-00207-SW  
OC 11/30/03 R 01  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 31, 2003, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A hearing was held on May 12, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative. Jennifer Stubbs participated in the hearing on behalf of the employer with a witness, Dave Layhee. Exhibits One through Four were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a control room operator from December 16, 2002 to December 2, 2003. The claimant was informed and understood that under the employer's work rules, employees were subject to discipline for failing to perform work as

directed by a supervisor or for carelessness or negligence that adversely affects the quality or quantity of production.

The employer had instituted a new management control system that was used to fill and ship orders. Most of the training the claimant received was on the job. There were many problems with the management control system and mistakes were made by the claimant and other employees. The claimant received a final written warning on October 29, 2003, after he had substantially overfilled an order on October 28. The error was not the result of any deliberate misconduct by the claimant.

On November 21, 2003, the employer discovered some additional errors in order filling that it attributed to the claimant. Most of the mistakes were not personally made by the claimant, but were made by other employees who also have problems with the management control system. The claimant also made some errors on that date but none of them were deliberate. The claimant performed his job to the best of his ability but not up to the employer's standards. Since he had been given a final warning on October 29, he was discharged on December 2, 2004, for making additional mistakes on November 21, 2004.

#### 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).

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).

The claimant may have been negligent but for negligence to equal willful misconduct in culpability, it requires what amounts to reckless conduct, conduct done with a disregard of the employer's interests. Such conduct has not been proven here.

#### DECISION:

The unemployment insurance decision dated December 31, 2003, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kjf