

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTTY G INMAN

Claimant

APPEAL NO. 11A-EUCU-00610-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

OC: 08/01/10

Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's July 18, 2011 determination (reference 03) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing with his union representative, Brian Ulin. Jessica Sheppard, a human resource generalist, appeared on the employer's behalf. During the hearing, Claimant Exhibit A was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in November 2009. He worked full-time in production. The claimant entered into a last-chance agreement with the employer on November 30, 2010. The claimant understood that if in the next six months he received any warning, except an attendance warning, he would be discharged.

On April 4, a supervisor met the claimant in an office and gave him a warning for attendance issues. When the claimant left the office, he stopped at the union office to briefly talk to a union representative. As the claimant walked back to his work station, he dropped a glove. The claimant understood the employer did not allow employees to wear gloves that had fallen on the floor. The claimant looked for another glove to wear before he went to his work station. After the claimant found a glove and was putting on the glove, he asked a co-worker what the count was. The count gives an employee an idea of how much longer they will be working. The co-worker was about ten feet from the claimant's work station.

While the claimant talked to the co-worker, 10 to 45 seconds, the supervisor who gave him the attendance warning, walked by. No one said anything to the claimant on April 4. On April 5, the employer informed the claimant he was discharged because he misused the employer's time the day before by talking to an employee when he should have been working. As a result of this misuse of company time, the claimant violated the terms of his last-chance agreement. The claimant had asked other employees about counts before and no one in management indicated this was a

problem. The employer's policy does not indicate an employee misuses company time when he talks to another employee on his way to his work station. (Claimant Exhibit A.)

REASONING AND CONCLUSIONS OF LAW:

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).

Since the employer's witness did not have any personal knowledge about the April 4 incident, the claimant's testimony as to what happened that day must be given more weight than the employer's reliance on hearsay information. The employer established business reasons for discharging the claimant. The claimant's actions on April 4 do not establish that he intentionally failed to work as scheduled or that he had any understanding he misused the employer's time or violated the provisions of his last chance agreement when he briefly talked to a co-walker when he returned from the office. The evidence does not establish that the claimant committed work-connected misconduct. As of June 26, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's July 18, 2011 determination (reference 03) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of June 26, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw