

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIKE L STANSBEARY
Claimant

APPEAL NO. 13A-UI-10054-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARGILL MEAT SOLUTIONS
CORPORATION**
Employer

OC: 08/04/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated August 28, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, a hearing was held on October 10, 2013, by telephone conference call. The claimant participated personally. The employer notified the agency that it would not be participating in the hearing. The record consists of the testimony of Mike Stansbeary and the testimony of Brian Ulin, the claimant's union steward.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact: The claimant worked at the employer's plant located in Ottumwa, Iowa. The claimant began working for the employer on November 18, 1992. He was a full-time production worker. The claimant's last day of work was August 8, 2013. He was terminated on August 8, 2013. The claimant was terminated because he smoked a cigarette in the restroom. He knew that he was not supposed to smoke in the plant, but he was very upset and stressed out about things that were happening to his father. He had been disciplined once before for smoking in January 2012. Otherwise he had a spotless record with the employer and has since been given his job back following a grievance.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes errors of judgment or discretion. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The claimant admitted that he was smoking in the plant, specifically the restroom, but he said that he was extremely stressed out over his father and decided to have a cigarette. He knew he should not have done it. The claimant's union steward testified that he had a very good record with the employer and has now been given his job back. While the administrative law judge cannot condone smoking in violation of the employer's rules, it appears to have been an error of judgment or discretion as opposed to being part of a pattern of wanton carelessness and disregard of the employer's rules. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated August 28, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs