IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MATTHEW S JONES
Claimant

CARGILL MEAT SOLUTIONS CORP
Employer

APPEAL NO. 11A-UI-14545-HT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/16/11
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Matthew Jones, filed an appeal from a decision dated November 7, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on December 6, 2011. The claimant participated on his own behalf and was represented by Brian Ulin. The employer, Cargill, participated by Hiring Supervisor Ben Wise.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Matthew Jones was employed by Cargill from March 21, 2006 until October 19, 2011 as a full-time production worker. On October 14, 2011, he had a disagreement with a co-worker who was acting, without authorization, as a supervisor and insisting other workers go to the restroom two at a time under his direction.

Mr. Jones, instead of going to the office to get the supervisor, approached the co-worker, touched his back and asked him "what the fuck" he thought he was doing. The co-worker said if he did not like it he could go to the supervisor, which Mr. Jones did.

It was later reported the claimant had "shoved" the co-worker and engaged in a flow of obscenities which others considered to be threatening. The matter was reported and Human Resources Generalist Jessica Shepherd investigated by interviewing the other person involved and three other witnesses. The claimant was not interviewed until the day he was discharged by Ms. Shepherd. At no time prior to that was he informed the investigation would be on-going with discharge a possible consequence.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case the employer did not present any eye witnesses to the event or even any statements from them regarding what happened. The employer did not even present testimony from the person who conducted the interviews. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety, 2*40 N.W.2d 682 (Iowa 1976).

The claimant did admit to touching his co-worker but nothing more than that. His only statement was "what the fuck" the other person thought he was doing. There is no evidence this type of language was unusual in the workplace. Isolated incidents of vulgar language where decorous language is not required is "unsatisfactory conduct" or a "mere peccadillo" rather than job misconduct. *Budding v. IDJS*, 337 N.W.2d 219 (Iowa App. 1983).

The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged.

DECISION:

The representative's decision of November 7, 2011, reference 01, is reversed. Matthew Jones is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs