

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDA K WHEATLEY**

Claimant

**APPEAL NO. 09A-UI-08907-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**

Employer

**OC: 05/03/09**

**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Linda Wheatley filed an appeal from a representative's decision dated June 11, 2009, reference 01, which denied benefits based on her separation from Cargill Meat Solutions Corporation (Cargill). After due notice was issued, a hearing was held by telephone on July 8, 2009. Ms. Wheatley participated personally. The employer participated by Rachel Watkinson, Human Resources Associate.

**ISSUE:**

At issue in this matter is whether Ms. Wheatley was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Wheatley was employed by Cargill from October 7, 1996 until April 30, 2009. She worked full time in production. She was discharged as a result of a fourth food safety violation. She received a verbal warning on August 1, 2008 because she was wearing a bracelet in the production area in violation of a known company rule. She acknowledged wearing the bracelet because she had forgotten about the work rule. She received a written warning on August 7, 2008 for chewing gum in the production area. Ms. Wheatley acknowledged that she was chewing gum in violation of the employer's rules.

Ms. Wheatley received a written warning and three-day suspension on November 6, 2008 for eating cookies in the production area. She acknowledged that she was eating cookies and that she knew her conduct was prohibited. Her discharge was prompted by the fact that she was again chewing gum in the production area on April 30, 2009. Her conduct was witnessed by someone in quality assurance and a supervisor. As a result, she was discharged on April 30. Ms. Wheatley had previously been disciplined in 2004 and 2005 for smoking in unauthorized areas.

## **REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Wheatley was discharged for violating the employer's food safety policies. Food safety guidelines are intended to ensure that foreign materials do not contaminate food products. Ms. Wheatley was aware of the employer's guidelines but proceeded to violate them on various occasions.

Ms. Wheatley acknowledged that she was, in fact, in violation of the policies when she wore a bracelet and was chewing gum in August of 2008. She also acknowledged that she was in violation by eating cookies in November of 2008. She denied that she was chewing gum on April 30. However, her acknowledged past food safety violations, along with her past conduct in smoking in unauthorized areas, demonstrate a willingness to disregard the employer's standards. Therefore, the administrative law judge finds it more likely than not that Ms. Wheatley again violated standards on April 30.

If food safety violations result in foreign materials getting into food product, it can result in injury or illness to the public. In such a case, product may have to be recalled and the employer may be exposed to legal liability. Given the disciplinary actions she received, Ms. Wheatley knew that adherence to the safe food handling guidelines was essential to her continued employment. Her failure to adhere to those guidelines constituted a substantial disregard of the standards the employer had the right to expect. For the reasons cited herein, it is concluded that disqualifying misconduct has been established and benefits are denied.

## **DECISION:**

The representative's decision dated June 11, 2009, reference 01, is hereby affirmed. Ms. Wheatley was discharged by Cargill for misconduct in connection with her employment. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/css