

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARL W WHENNEN**

Claimant

**APPEAL NO. 09A-UI-05808-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**

Employer

**OC: 03/22/09**

**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Carl Whennen filed an appeal from a representative's decision dated April 10, 2009, reference 01, which denied benefits based on his separation from Cargill Meat Solutions Corporation (Cargill). After due notice was issued, a hearing was held by telephone on May 11, 2009. Mr. Whennen participated personally and offered additional testimony from Brian Ulin. The employer did not provide the name and telephone number of a witness to participate on its behalf. The employer attempted to withdraw the appeal; however, it was not the employer's appeal.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Whennen was employed by Cargill from March 28, 2005 until March 26, 2009 as a full-time laborer. The employer has a written policy that requires employees to clock in and out when going to the restroom. Mr. Whennen was aware of the policy.

There were four occasions on which Mr. Whennen failed to clock out or clock in before or after a restroom break. He was usually gone no more than five to ten minutes. He had been disciplined on three occasions due to his failures. The final incident occurred a few days before his discharge when he failed to clock back in after a restroom break. As a result, he was discharged on March 26, 2009. He was not given any other reason for the discharge. He had not been disciplined for any other matter.

**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). The only reason given Mr. Whennen for his discharge was the fact that he failed to clock out or in when leaving the line to use the restroom on four occasions. The administrative law judge does not believe he deliberately or intentionally failed to follow the established policy. The fact that he forgot to clock out or in was, at most, negligence.

Negligence constitutes disqualifying misconduct only if it is so recurrent as to establish a substantial disregard of the employer's standards. The employer did not participate in the hearing to provide evidence as to when the incidents occurred. Therefore, the administrative law judge does not know the time span over which the four failures attributed to Mr. Whennen occurred or the time lapse between incidents. The employer failed to establish that the four incidents of negligence referred to herein were so recurrent as to amount to disqualifying misconduct. Inasmuch as the employer has failed to satisfy its burden of proof, no disqualification is imposed.

**DECISION:**

The representative's decision dated April 10, 2009, reference 01, is hereby reversed. Mr. Whennen was discharged by Cargill but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs