

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY WHITLATCH
Claimant

APPEAL NO. 14A-UI-01243-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARGILL MEAT SOLUTIONS
CORPORATION**
Employer

OC: 01/12/14
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated January 30, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on February 25, 2014. Claimant participated. Participating on behalf of the claimant was Mr. Brian Ulin, Union Representative. The employer participated by Ms. Angie Stevens, Assistant Human Resource Manager. Employer's Exhibits A, B, C, and D were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Terry Whitlatch was employed by Cargill Meat Solutions Corporation from July 20, 2011 until January 9, 2014 when he was discharged from employment. Mr. Whitlatch was most recently employed as a full-time production worker working the company's first shift and was paid by the hour. His immediate supervisor was Mo Lopez.

Mr. Whitlatch was discharged on January 9, 2014 based upon his refusal to perform a work task as instructed by a company supervisor and verified by the company's general supervisor who was on duty at the time.

Mr. Whitlatch had initially been told to temporarily run a company slicer machine instead of performing the tube dump job that he was performing at the time. Mr. Whitlatch had initially complied with the request although he believed that he should not be required to perform the slicing job. Mr. Whitlatch then questioned the general supervisor, Mike Wright, about job ownership and bumping rights. Subsequently, the claimant discontinued performing the slicing work and resumed his normal tube dumping duties.

In what appears to be an effort on the part of supervisors to avoid any further misunderstanding about the work directive, both the supervisor, Mr. Stinson, and the general supervisor, Mr. Wright, came to the claimant's work area together and Mr. Stinson again directed the claimant to temporarily perform the slicer job duties. This request was made in the presence of Mr. Wright who had accompanied Mr. Stinson. After the claimant had refused the directive three times in the presence of both supervisors, the claimant was sent to the company's offices and discharged from employment. The company considered the claimant's repeated refusal to be a serious violation of company policy.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not

necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand the claimant initially questioned a work directive given by a company supervisor to temporarily stop performing his regular duties and to perform slicing work normally done by another employee. When the employer concluded that the claimant might be receiving conflicting information from a general supervisor who was also on duty that day, both supervisors returned to the work area and the work directive to begin temporarily performing slicing work was again given to Mr. Whitlatch by Supervisor Stinson while General Supervisor Wright was present to eliminate any further misunderstanding on the part of the claimant about the employer's work expectations. Although Mr. Whitlatch was aware that the established and expected practice was for an employee to follow the disputed directive and then later dispute it, if necessary, the claimant nevertheless continued to refuse the directive and was discharged from employment. The claimant had the reasonable alternative of complying and later disputing the directive but chose not to follow the work directive. Benefits are withheld.

DECISION:

The representative's decision dated January 30, 2014, reference 01, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs