

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GERARDO B FIERROS**

Claimant

**APPEAL NO. 11A-UI-14950-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**

Employer

**OC: 10/09/11**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated November 2, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on December 13, 2011. Claimant participated personally. The employer participated by Brian Ulin, Union Representative, and witness, Martin Fierros, Claimant's Father/Fellow Employee. The employer participated by Ms. Jessica Sheppard, Human Resource Generalist. Official Interpreter was Mr. Ike Rocha.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Gerardo Fierros was employed by Cargo Meat Solutions from June 29, 2009 until October 13, 2011 when he was discharged from employment. Mr. Fierros was most recently employed as a full-time production worker and was paid by the hour.

The claimant was discharged when he was unable to complete documentation for testing of a number of cartons of meat in "real time" on October 10, 2011.

On that date, Mr. Fierros took initial readings of weights of meat before and after the injection of a flavoring additive had been pumped into the product. Mr. Fierros was unable to fully complete the documentation on the log because of an unexpected backup of the production line causing meat products to stack up and fall on the floor. Claimant did not have any assistance and had been previously warned for allowing meat to fall on the floor. Mr. Fierros felt that taking the initial readings and noting them correctly was sufficient based upon his perception that he should devote his attention to caring for the backlog of meat that was occurring.

Individuals performing this task are expected to complete the log forms as they obtain the test results. Because the company was required to re-test a number of cartons of meat, a decision was made to terminate Mr. Fierros for "falsification of records."

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

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. 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 order to be disqualifying in nature, the misconduct must be "substantial." When based upon carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

The evidence in the record establishes that Mr. Fierros did not intentionally fail to report all information on the log sheet for the products he was testing on October 10, 2011. The claimant was faced with an unexpected backup of the production line causing meat to fall on the floor. Mr. Fierros knew that based upon a previous warning that he might be discharged if he did not prevent the meat from further falling on the floor and there was no one else to assist the claimant. Mr. Fierros made his best reasonable choice by attempting to quickly obtain the required before and after weights and to quickly compute the percentages and then rushed to stop the backup of the production line. The claimant was not aware that failing to complete all parts of the log in "real time" when presented with these unusual circumstances, would result in his termination from employment.

The question before the administrative law judge is not whether the employer has a right to discharge Mr. Fierros for these reasons but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, the administrative law judge concludes based upon the evidence in the record that the claimant's poor performance was the result of an isolated instance of poor judgment caused by the highly extenuated circumstances at the time. The claimant is eligible to receive unemployment insurance benefits, provided that he meets all other eligibility requirements of Iowa law.

The appeal in this matter was not initially filed timely because Mr. Fierros had not received the initial notice of the adjudicator's determination. The claimant acted reasonably and immediately obtaining a copy when he realized he had not received a decision and filed his appeal immediately upon receipt of the decision at that time. Good cause for late filing has been shown.

**DECISION:**

The representative's decision dated November 2, 2011, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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