

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GUILLERMO G POMPA**

Claimant

**APPEAL NO. 08A-UI-03388-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**

Employer

**OC: 02/10/08 R: 03  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Cargill Meat Solutions Corporation (employer) appealed a representative's March 28, 2008 decision (reference 01) that concluded Guillermo G. Pompa (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 22, 2008. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Laurie Elliott, the assistant human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on December 5, 2006. The claimant worked as a full time production worker in the bacon department. During the course of his employment, the claimant received warnings for violating various rules. On January 8, 2008, the employer gave the claimant a final warning for misuse of company time. The employer had the claimant sign a "Last Chance Agreement," which indicated he would be discharged the next time he violated any of the employer's policies. The employer addressed the claimant's attitude on January 8. The employer noticed the claimant was developing a negative attitude.

On January 25, 2008, the claimant and another employee engaged in a verbal confrontation at work. It is not known what time the verbal confrontation occurred, but the claimant left work 30 to 60 minutes early. After the claimant punched out, the employer obtained statements from

employees who heard the verbal disagreement. These employees reported the claimant yelled and swore at another employee. The employer did not know what prompted the verbal confrontation between the claimant and a co-worker.

The next day when the claimant reported to work, the employer had the claimant go to the human resource department. When the claimant reported to the human resource department he appeared very upset and agitated. No one asked the claimant why he was upset that day or what had happened the night before. The employer discharged the claimant for violating the employer's code of conduct by engaging in a verbal confrontation (swearing and yelling) with a co-worker at work the night before.

The claimant established a claim for benefits during the week of February 10, 2008. The claimant filed claims for the weeks ending February 16 through April 19, 2008. The claimant received his maximum weekly benefit amount of \$238.00 for each of these weeks.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known his job was in jeopardy on January 8, 2008. On January 8, the employer warned the claimant that if in the future he violated ANY policy, the employer would discharge him. The employer's policy or code of conduct is reasonable in that arguing with a co-worker at work disrupts the work environment and production. Since the claimant did not participate in the hearing to explain what prompted the verbal confrontation between himself and another employer, a preponderance of the evidence established the claimant committed work-connected misconduct when he yelled and swore at a co-worker during his shift on January 25, 2008. Therefore, as of February 10, 2008, the claimant is not qualified to receive benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending February 16 through April 19, 2008. He has been overpaid \$1,640.00 in benefits he received for these weeks.

**DECISION:**

The representative's March 28, 2008 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 10, 2008. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant has been overpaid and must repay a total of \$1,640.00 in benefits he received for the weeks ending February 16 through April 19, 2008.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css