

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREA L OWINGS
Claimant

APPEAL NO. 09A-UI-15653-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 09/27/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated October 15, 2009, reference 01, that held she was discharged for misconduct on September 25, 2009, and benefits are denied. A telephone hearing was held on November 19, 2009. The claimant, and Union Representative, Brian Uhlin, participated. Alicia Alonzo, HR Generalist, and Jim Greer, Supervisor, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant began full-time employment on January 8, 2008, and last worked as a full-time production worker in the bacon department on September 25, 2009. The employer disciplinary policy provides that a first offense falsification of a document or procedure is a dischargeable incident.

One of the claimant's job duties was to audit the product in her department to check products for improper seals or leaks or other issues. The claimant was to conduct 14 audits on three different lines by pulling product for a one-hour review, and then signing-off on an audit sheet that the procedure had been completed. The supervisor who instructed the claimant advised that it was permissible to sign-off on the audit, if time did not permit a complete audit.

When Supervisor Greer did not observe audit product at claimant's workstation, he questioned claimant as to whether she had conducted the audit as shown on her audit sheet. Claimant stated she did not have sufficient time to do all full audit, as she had pulled product from two of the three lines. Claimant's audit sheet showed she had fully completed the audit.

The employer discharged the claimant for falsification of her audit sheet.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes that the employer failed to establish the claimant committed an act of misconduct in her discharge on September 25, 2009.

The employer failed to produce any training document to show the claimant understood that a failure to conduct a complete audit would result in termination in light of the claimant being told by a former supervisor that she could record it as complete, even if it was not so. There is no evidence the claimant had received any warning for this offense, and the employer policy providing for a first offense discharge is not controlling on the issue of misconduct. A one-time incident calls for greater scrutiny, especially when the matter involves a routine, daily procedure.

DECISION:

The department decision dated October 15, 2009, reference 01, is reversed. The claimant was not discharged for misconduct in connection with employment on September 25, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css