

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUNDAY WEAH
Claimant

ARCHER-DANIELS-MIDLAND CO
Employer

APPEAL 19A-UI-05577-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/16/19
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On July 12, 2019, the claimant filed an appeal from the July 10, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephonic hearing was held on August 6, 2019. The claimant, Sunday Weah, participated. The employer, Archer-Daniels-Midland Company, participated through Mike Kuntz, Plant Manager.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began his employment with Archer-Daniels-Midland Company on November 8, 2016. Claimant was employed full-time with the employer, most recently as an operator 2. Claimant was employed until June 7, 2019, when he was discharged for failure to work safely.

On May 30, 2019, claimant was working with two loaders. He needed to go on top of a railcar to draw a sample. Claimant went on top of the railcar without placing his lock on the derailer. He knew that both the loaders had their locks on the derailer, so claimant thought he did not have to put his lock on the derailer. Claimant's shift supervisor saw him do this and immediately reported it to Kuntz. When Kuntz and the shift supervisor spoke to claimant about this, claimant admitted that he did not put his lock on the derailer.

Claimant received a prior warning for a safety violation on September 7, 2018. On that occasion, claimant went on top of a railcar without placing his lock on the derailer. Kuntz talked to claimant at that time and explained the importance of placing his lock on the derailer. If the derailer is not locked out, it could be removed from the tracks and the railcars could move, which could result in death or serious bodily injury. There are no circumstances in which an employee is excused from placing his lock on the derailer if he is going on top of or underneath a railcar.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's testimony credible. The administrative law judge believes Kuntz told claimant that his job was in jeopardy if he failed to place his lock on the derailer again.

In this case, the employer discharged claimant for failing to place his lock on the derailer before he climbed on top of a railcar. This could have resulted in claimant being killed or seriously injured. The employer has a right to impose rules and regulations to keep its employees safe. Claimant had been warned previously for this exact safety violation, and any reasonable employee would know his job was in jeopardy for a repeated violation of this nature. The administrative law judge finds claimant was discharged for disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The July 10, 2019, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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