

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN F GRAVES
Claimant

CARGILL INCORPORATED
Employer

APPEAL 21A-UI-08032-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/17/21
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 17, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 1, 2021. Claimant John F. Graves participated. Employer Cargill Incorporated participated through manager Kathleen Rexroad. Employer's Exhibits 1 – 5 were received.

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 was employed full time as an oil loader worker from September 11, 2011, until January 11, 2021, when he was discharged.

The final incident leading to claimant's discharge occurred on December 29, 2020, an employee saw claimant working on top of a rail car without using any fall protection. Employer maintains a policy requiring employees to use specific fall protection when higher than 12 feet. Employer provides a copy of the policy to employees upon hire and regularly provides trainings on fall protection and safety, as well as conducts semi-annual inspections. See Employer's Exhibits 1-3. Claimant was aware of the policy requiring fall protection. Claimant did not recall going up on the rail car that day without protection, but an employee provided supporting photographs to employer. Claimant explained that he has seen other employees and a supervisor in high positions without fall protection, but claimant did not report these incidents because he did not believe anything would be done. Employer noted there are instances when the risk is assessed to determine whether an action can be completed without fall protection, but being on top of a rail car would never fall under that scenario and employees are made aware of that.

On January 11, 2021, employer terminated claimant's employment.

Employer never previously disciplined claimant for any safety violations.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

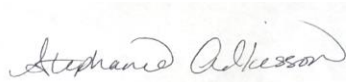
In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential

liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Here, claimant was on a rail car higher than 12 feet high without fall protection. Employer maintains safety policy requiring fall protection to prevent injuries. While claimant asserts he saw other employees doing similar things without fall protection, he was aware that the safety rules required that he use fall protection while on top of a rail car. Claimant's actions were in violation of employer's safety policy and in deliberate disregard of employer's interest in maintaining a safe workplace. Claimant's actions do amount to misconduct, even without prior warning. Benefits are denied.

DECISION:

The March 17, 2021, (reference 01) unemployment insurance decision is affirmed. The 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.



Stephanie Adkisson
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June 16, 2021
Decision Dated and Mailed

sa/mh