

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CYNTHIA FELDOTT**  
Claimant

**APPEAL NO: 08A-UI-05178-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL INCORPORATED**  
Employer

**OC: 04-27-08 R: 04  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 19, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 12, 2008. The claimant participated in the hearing. Emily Halfpap, Accounting Manager and Jim Schonhoff, FSG Operations Leader, participated in the hearing on behalf of the employer. Employer's Exhibits One through Seven were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time administrative customer service representative for Cargill Inc. from May 17, 2006 to April 25, 2008. On December 19, 2007, the employer issued a Performance and Behavior Expectations memo to the claimant detailing the "minimum requirements and expectations for (the claimant's) role during the river close from December 2007 through March 2008" (Employer's Exhibit One). On January 18, 2008, the employer conducted the claimant's quarterly performance review (Employer's Exhibit Two). It stated that the claimant "meets some" of the overall performance criteria (Employer's Exhibit Two). The claimant completed the first part of the form and the employer completed a "Follow Up Items" section. The employer indicated it "would like to see her follow through in the development process by also providing team members constructive feedback" rather than becoming frustrated with temporary employees and not showing them how to perform tasks correctly. It further stated that the claimant "could benefit by channeling her frustrations into positive energy to create/suggest opportunities for improvement in our processes" (Employer's Exhibit Two). On February 2, 2008, Accounting Manager Emily Halfpap noted that the claimant was "disgruntled, stomping around, sighing, making faces" and when Ms. Halfpap asked her what the problem was the claimant stated she had to "get up and walk to the scale again" (Employer's Exhibit Three). Ms. Halfpap discussed possible solutions to the claimant having to

walk an estimated 30 to 40 feet to the scale such as moving her desk closer to the scale but the claimant indicated she did not want to move her desk out there (Employer's Exhibit Three). Ms. Halfpap responded that if the claimant did not wish "to do anything about it to quit complaining (Employer's Exhibit Three). The claimant also complained about having to weigh the salt trucks as well as the grain trucks and Ms. Halfpap stated that "we all have job duties that we don't like to do and that if she wasn't willing to do anything to stop complaining (Employer's Exhibit Three). Ms. Halfpap documented the conversation because the claimant was "stomping around and rolling her eyes" because she had to walk to the scale." On March 6, 2008, the employer issued a 90-day Performance Improvement Plan (PIP) to the claimant covering her attitude and demeanor such as "Discuss, Decide, Champion and Supporting Decisions; Demonstrate Respect, Candor and Commitment; Pursue and Reinforce Collaboration: Managing Conflict; Ensure and Accept Accountability – Taking Responsibility; and Challenge, Innovate, Change – Demonstrating Adaptability" (Employer's Exhibit Four). Some of the issues discussed were that the claimant was "often disgruntled and confrontational," "creates a distraction in the office with both verbal and non-verbal communications," "gets very frustrated outwardly with problems or items distracting current work load," "often defends her negative behavior with excuses," "often challenges decisions made in a confrontational rather than a candid manner, unable to quickly adapt to unexpected events and shifting priorities without creating a distraction, people and co-workers avoid (her) because of negative attitude and behaviors" (Employer's Exhibit Four). The claimant signed the PIP which stated that if her performance did not improve a Disciplinary Improvement Plan would issue (Employer's Exhibit Four). On April 15, 2008, after not seeing any improvement in the claimant's behavior, the employer issued a 30-day Disciplinary Improvement Plan which restated the behaviors listed in the PIP and added four situations under Knowledge/Execution where the claimant failed to perform as expected (Employer's Exhibit Five). The Disciplinary Improvement Plan stated that if "it becomes clear at anytime throughout the next 30 days that you will not achieve the objectives, the result will be termination of employment" (Employer's Exhibit Five). The claimant signed the warning (Employer's Exhibit Five). Employer's Exhibit Six details specific examples of the claimant's failure to perform to the employer's expectations between the weeks of December 24, 2007 and April 14, 2008, including her handling of the Olsen account (Employer's Exhibit Six). On March 31, 2008, the employer held a meeting with the claimant and was told that the Olsen account was a priority for the week and that "all items must be supported with their differences" (Employer's Exhibit Six). The April 4, 2008, deadline arrived and the claimant said she had "no idea how to accomplish" that task and when Ms. Halfpap asked her why she did not ask for help she stated she "had no idea how to look into the issue so (she) did nothing (Employer's Exhibit Six). She also said she was "too busy" working the scale and doing fertilizer to do anything with the Olsen account (Employer's Exhibit Six). The scale was closed April 3 and 4, 2008, to grain trucks and the claimant did not ask for help or tell Ms. Halfpap she would not meet the deadline during the five days from being told the Olsen account was a priority and the deadline (Employer's Exhibit Six). She told Ms. Halfpap if she wanted the Olsen account done she should have done it herself (Employer's Exhibit Six). The employer did not see any improvement between April 4 and April 25, 2008, and on April 25, 2008, the employer met with the claimant at 8:30 a.m. and told her it had not seen any improvement in her behavior or performance and her employment was terminated (Employer's Exhibit Seven).

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

## REASONING AND CONCLUSIONS OF LAW:

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

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1986). The employer provided the claimant with clear expectations regarding her performance and behavior in the memo dated December 19, 2007, but the claimant failed to meet those expectations and was placed on a Performance Improvement Plan March 6, 2008 and a Disciplinary Improvement Plan April 15, 2008. Despite those warnings, however, the claimant continued to exhibit a poor attitude by stomping around, rolling her eyes, and sighing heavily when required to do a task she did not wish to do. Those behaviors affected her job performance as well as the morale of the office. The "last straw" occurred when the claimant failed to meet the deadline on the Olsen account and did not communicate that she would not meet the deadline or ask for help from Ms. Halfpap but instead did nothing on the account because she did not know how to do the work. Considering the totality of the circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its

burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The May 19, 2008, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,490.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs