

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODOLFO O RODRIGUEZ
Claimant

APPEAL NO. 12A-UI-01757-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 07/24/11
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Rodolfo Rodriguez, filed an appeal from a decision dated February 17, 2012, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on March 9, 2012. The claimant participated on his own behalf with Nancy Porres-Rodriguez and was represented by Iowa Legal Aid in the person of Virginia McCalmont. The employer, Cargill, did not provide a telephone number where a witness could be contacted and did not participate..

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Rodolfo Rodriguez was employed by Cargill from May 14, 2008 until January 12, 2012 as a full-time machine operator. On January 11, 2012, the claimant left work around 8:00 a.m. when his shift did not end until 3:00 p.m. This is because he was suffering pain in his feet, a condition he had for some time. He did not notify his supervisor, the nurse or the human resources department he needed to leave but merely punched out and went home.

He did not go to the doctor or an emergency care unit to deal with the pain but he did return to the work place around 2:00 p.m. to get paperwork for a leave of absence. The next day when he returned to work he was notified he was discharged for leaving work without authorization or notice.

REASONING AND CONCLUSIONS OF LAW:

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.

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 claimant was not discharged for having problems with his feet, and it is not relevant whether the employer did or did not know about this medical problem. The issue is solely whether the claimant was discharged for leaving work without notice to, or permission from, the employer.

The claimant's testimony was that the human resources representative who fired him said she did not have any choice but to "follow the rule" which implies the rule mandates discharge for anyone who leaves work early without permission from a supervisor or other authorized person.

The claimant could have gone to the human resources department or the company nurse and applied for permission to go home but he did not do so. He knew the location of each of these places but did not avail himself of the option when he could not locate his immediate supervisor.

Mr. Rodriguez and his witness maintain that others have not been fired for one incident of leaving work early without permission. The administrative law judge cannot accept that testimony as being based on any actual knowledge as neither of these individuals was consulted about or privy to the reason any other employee may have been discharged.

The record establishes the claimant was discharged for violation of a known company rule which calls for discharge of anyone who leaves work early without permission from the employer.

DECISION:

The representative's decision of February 17, 2012, reference 02, is affirmed. Rodolfo Rodriguez is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs