**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**COREY D BREON**
Claimant

**CARGILL MEAT SOLUTIONS CORPORATION**
Employer

**APPEAL NO. 08A-UI-01733-S2T**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 12/30/07 R: 03**
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Cargill Meat Solutions (employer) appealed a representative's February 8, 2008 decision (reference 02) that concluded Corey Breon (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 6, 2008. The claimant participated personally. The employer participated by Katie Holcomb, Human Resources Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on September 19, 1991, as a full-time production employee performing janitorial duties. The employer terminated the claimant on July 20, 2005, and rehired him after a grievance was filed. On August 11, 2005, the employer issued the claimant a written warning for attendance. On November 29, 2007, the employer issued the claimant a written warning for failure to follow instructions. The claimant was being instructed to steal by his supervisor, not steal a barrel by another supervisor and take a barrel from a third location by a third supervisor.

On December 31, 2007, the claimant collected refuse in a centralized trash location. The claimant left the location to go to the rest room. While he was away, a dry ice bomb exploded. Two unknown workers said the claimant was the only person by the collection site prior to the explosion. The claimant collected trash from numerous areas and the bomb could have been in trash from any one of those areas. The claimant denied having anything to do with the dry ice bomb. The employer terminated the claimant.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for 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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer did not rebut the plausible explanation that the dry ice bomb was in the trash from another location and was not placed there by the claimant. The claimant can not be held responsible for what all the employees in the plant place in the trash. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's February 8, 2008 decision (reference 02) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw