

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER A JONES**

Claimant

**APPEAL NO: 10A-UI-03532-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**

Employer

**OC: 02/07/10**

**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's February 26, 2010 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on April 8, 2010. The claimant participated in the hearing. Jessica Sheppard, a human resource associate, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on May 28, 2009. The employer hired the claimant to work as a full-time production employee. The employer's attendance policy informs employees they can be discharged if they accumulate 11 points for unexcused absences. The claimant received warnings for attendance issues when he accumulated 5, 8 and 9 attendance points.

After the claimant accumulated 11 points, the employer gave him an opportunity to continue his employment. The employer offered the claimant a last-chance agreement. The last-chance agreement informed the claimant that he would be discharged if he had any unexcused absence before July 11, 2010. The claimant accepted the last-chance agreement.

After the claimant signed the last-chance agreement, he made arrangements to ride to work with someone until he got his vehicle running again. The claimant had to do a major repair on his vehicle. The claimant finished repairing his vehicle the morning of February 1. After this major repair was completed, the person who helped repair the vehicle told the claimant about another problem that needed to be fixed. A mount on the front of the vehicle needed to be replaced. While this needed to be replaced, the claimant was told the mount did not need to be immediately replaced.

The claimant picked up the necessary part for his vehicle on Tuesday or Wednesday. He planned to fix the mount on Saturday. On his way to work on February 4, the mount came out and the claimant had to pull off the road. The claimant called the employer when he knew he would be late. Since the claimant had the part in his car, he replaced the mount so he could get to work. The claimant was 30 or 35 minutes late for work on February 4, 2010. The claimant did not punch in when he arrived because he immediately talked to his supervisor. The claimant asked if the time off he had for his birthday on February 19 could be used on February 4 and then he would work on February 19.

The employer discharged the claimant because in accordance with the last-chance agreement the claimant could not have any unexcused absences after January 11, 2010 and he had an unexcused attendance issue on February 4, 2010.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The claimant knew and understood his job was in jeopardy when he signed the last-chance agreement on January 11, 2010. Pursuant to the last-chance agreement, the employer established justifiable business reasons for discharging the claimant. The claimant did not, however, commit work-connected misconduct. After he completed the major repair on his vehicle, he learned he needed to replace a mount. The claimant was told this was not a problem that needed to be fixed immediately. The claimant took reasonable steps and bought the necessary part to make this repair within a day or two of learning about the problem. He planned to make the necessary repair within five or six days of learning about the problem. Unfortunately, on his way to work on February 4, the mount broke and the claimant had to repair his vehicle on the side of the road before he could get to work. The claimant timely notified the employer that he would be late. The claimant arrived at work as soon as he repaired the problem and could drive his vehicle. Under these facts, the claimant did not intentionally fail to

work as scheduled on February 4, 2010. The additional problem with his vehicle was unforeseen. The claimant did not commit work-connected misconduct on February 4, 2010. Therefore, as of February 7, 2010, the claimant is qualified to receive benefits.

**DECISION:**

The representative's February 26, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of February 7, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css