

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

AMADOU SAIDOU  
630 N FELLOWS AVE APT 101  
OTTUMWA IA 52501-3272

CARGILL MEAT SOLUTIONS CORP  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-02349-SWT  
OC: 01/22/06 R: 03  
Claimant: Appellant (1-R)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 21, 2006, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on March 15, 2006. The parties were properly notified about the hearing. The claimant was represented at the hearing by his wife and authorized representative, Anita Saidou. Erica Bleck participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a production employee from April 14, 2003, to January 23, 2006. The claimant was informed and understood that under the employer's work rules, alien workers had to have a valid work authorization card in order to be employed. The employer has set up a notification system that informs alien workers in writing about the need to

have a valid work authorization at 120 days, 90 days, 60 days, and 30 days before the expiration of their work authorization card.

The claimant's work authorization card was due to expire on January 21, 2006. The employer followed its process and notified the claimant at 120 days, 90 days, 60 days, and 30 days before his work authorization expired. The claimant, however, waited until December 23, 2005, to submit his application for employment authorization. Because of the time involved in processing his application, the claimant had to have known that he would not have a work authorization card by January 21, 2006.

The employer brought the claimant in on January 20, 2006, to inform him that if he did not have a valid work authorization card by the next time he was scheduled to work on January 23, he would be terminated. The claimant did not have a valid work authorization card on January 23 and was discharged on that basis.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 22, 2006. At the time he applied for benefits and as of the time of the hearing on March 15, 2006, the claimant still did not have a valid work authorization card.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The issue of whether the claimant should be further disqualified on the basis that he did not have a valid work authorization when he applied for benefits is remanded to the Agency.

DECISION:

The unemployment insurance decision dated February 21, 2006, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant should be further disqualified on the basis that he did not have a valid work authorization when he applied for benefits is remanded to the Agency.

saw/kkf