

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

SHERRY L SHERWOOD  
PO BOX 398  
HEDRICK IA 52563

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

Appeal Number: 05A-UI-08867-DWT  
OC: 07/24/05 R: 03  
Claimant: Respondent (1)

**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:

Cargill Meat Solutions Corporation (employer) appealed a representative's August 15, 2005 decision (reference 01) that concluded Sherry L. Sherwood (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 14, 2005. The claimant participated in the hearing. The employer responded to the hearing notice. The employer's witness was called, but the witness was not available for the hearing. A message was left on the witness's answering machine to immediately contact the Appeals Section. The employer did not contact the Appeals Section while the hearing was held. Based on the evidence, the arguments of the claimant, 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 July 3, 2001. The claimant worked full-time. During her employment, the employer assigned the claimant various jobs. The claimant knew the employer had an attendance policy. The claimant understood an employee would be discharged if the employee accumulated ten points within a year. The claimant also understood points could roll off an employee's accumulated point total.

As of July 18, 2005, the claimant knew she had accumulated nine attendance points. The claimant understood one of her attendance points would roll off on July 19, 2005, leaving her with a total of eight attendance points. The claimant asked her supervisor if she could leave work early on July 19 to take care of some personal family matters. The claimant's supervisor gave the claimant permission to leave at noon or about 3.5 hours before her shift ended. If the claimant would have left work with less than two hours of her shift remaining, she would have been assessed a half point instead of one attendance point.

The claimant worked as scheduled on July 20 and 21. At the end of her shift on July 21, the employer discharged her for violating the employer's attendance policy. The employer recorded the claimant as having ten attendance points as of July 20, 2005. The claimant's union agreed the claimant only had nine attendance points as of July 20 and grieved the claimant's termination.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or

other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7). 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 employer may have had business reasons for discharging the claimant. When the claimant left work early on July 19, her supervisor gave her permission to leave. The claimant understood that as a result of leaving work early, she would only have nine attendance points because one attendance point was to come off on July 19. If the employer had told the claimant she would be discharged if she left work early, the claimant would have stayed and completed her shift. If the claimant had left less than two hours early, the employer would not have discharged her because under the employer's reasoning the claimant would have accumulated 9.5 instead of 8.5 points. The facts do not establish that the claimant intentionally or substantially disregarded the employer's interest. The claimant did not commit a current act of work-connected misconduct. As of July 24, 2005, the claimant is qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's August 15, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute a current act of work-connected misconduct. As of July 24, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf