

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD L LEOPARD**  
Claimant

**APPEAL NO. 07A-UI-10892-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**  
Employer

**OC: 10/14/07 R: 03**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Cargill Meat Solutions Corporation (employer) appealed a representative's November 16, 2007 decision (reference 02) that concluded Richard L. Leopard (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 December 11, 2007. The claimant participated in the hearing. Katie Holcomb, the human resource manager, 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 November 27, 2001. The claimant worked as a full-time maintenance technician. The employer's written policy informed employees they can be discharged if they harass another employee at work. Prior to October 13, 2007, the claimant's job was not in jeopardy.

On October 13, a female production worker showed the employer a note a male employee gave her sometime before 5:00 p.m. that day. The note had the claimant's name and phone number on it and indicated he wanted her to place an order for him. The note also had several sexually explicit pictures on it. The female employee reported she was told that that if she did not want to place the order, she should give the note to another female employee.

The employer pulled the claimant's picture off its computer system. The female employee identified the claimant as the person who gave her the note. While the claimant was in an office with a union representative, the female worker told the employer that the claimant was the male who gave her the note.

The claimant denied giving the note to the female employee. The claimant explained that his name and phone number are prominently displayed in the workplace. Also, there are about 25 employees who have the claimant's physical characteristics. The employer has no record of the claimant having any problems of a similar nature prior to October 13.

The employer believed the female employee and concluded the claimant harassed this co-worker. Even though the claimant's job was not in jeopardy prior to October 13, the employer discharged the claimant on October 16, 2007, for sexually harassing a female employee.

### **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).

Based on the employer's investigation, the employer established business reasons for discharging the claimant. Unfortunately, the employer had the opportunity to hear the female employee and concluded she was credible. Since the female employee did not testify at the hearing, the employer relied on unsupported hearsay information at the hearing. The claimant's testimony was credible and must be given more weight than the employer's hearsay information. Based on a preponderance of the credible evidence presented during the hearing, the employer did not establish that the claimant committed work-connected misconduct. Therefore, as of October 14, 2007, the claimant is qualified to receive unemployment insurance benefits.

(If the complaining employee had testified and was credible, the outcome of this case may have been different.)

**DECISION:**

The representative's November 16, 2007 decision (reference 02) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. Therefore, as of October 14, 2007, the claimant is qualified to receive unemployment insurance 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/kjw