

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANTHONY PRYOR**  
Claimant

**APPEAL NO. 08A-UI-05393-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS COPR**  
Employer

**OC: 05/04/08 R: 03**  
**Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Cargill Meat Solutions Corporation (Cargill) filed an appeal from a representative's decision dated May 28, 2008, reference 01, which held that no disqualification would be imposed regarding Anthony Pryor's separation from employment. After due notice was issued, a hearing was held by telephone on June 23, 2008. The employer participated by Lori Elliott, Assistant Human Resources Manager. Mr. Pryor did not respond to the notice of hearing.

**ISSUE:**

At issue in this matter is whether Mr. Pryor was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Pryor was employed by Cargill from May 7, 2007 until April 26, 2008 as a full-time production worker. He was discharged for going to break early. He was entitled to two breaks each day, a 15-minute break at 5:00 p.m. and a 30-minute break at 7:30 p.m. Employees are to go on break when the production line stops. They are not required to clock in and out for breaks.

Mr. Pryor received a written warning on November 20, 2007 because he went to break 15 minutes early. He received another warning and a three-day suspension on January 9, 2008, when he again went to break early. An additional written warning was given on March 24 when Mr. Pryor went to break early. He was observed in the parking lot at least 8 minutes before break time. The final incident occurred on April 26, when he again went on break early. He did not have permission to go to break early on any of the above occasions.

Mr. Pryor was suspended from work on April 26. The employer met with him on May 2 and notified him of his discharge at that time. He could offer no explanation as to why he was leaving for break before the scheduled times. His conduct in going to break early was the sole reason for the termination.

Mr. Pryor filed a claim for job insurance benefits effective May 4, 2008. He has received a total of \$2,233.00 in benefits since filing the claim.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Pryor was discharged for repeatedly going to break before the scheduled times. He was warned in November that he was not to go on break early. In spite of the warning, he again violated the employer's standards on January 9, resulting in an additional warning and a suspension.

Mr. Pryor continued to violate the known standards on March 24 and April 26. Since he had been warned twice about the conduct, the administrative law judge can only assume that his continued violations were deliberate and intentional. He did not participate in the hearing to offer justification for his repeated violations of the employer's standards. The administrative law judge concludes that Mr. Pryor's repeated violations of standards after repeated warnings constituted a substantial disregard of the standards he knew the employer expected of him and is, therefore, misconduct within the meaning of the law. As such, benefits are denied.

Mr. Pryor has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

**DECISION:**

The representative's decision dated May 28, 2008, reference 01, is hereby reversed. Mr. Pryor was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Pryor has been overpaid \$2,233.00 in job insurance benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw