

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN W ELLIS
Claimant

APPEAL NO. 09A-UI-05595-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 03/08/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Cargill, filed an appeal from a decision dated March 31, 2009, reference 01. The decision allowed benefits to the claimant, Shawn Ellis. After due notice was issued, a hearing was held by telephone conference call on May 6, 2009. The claimant participated on his own behalf. The employer participated by Human Resources Generalist Alicia Alonzo.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Shawn Ellis was employed by Cargill from January 3, 2008 until March 11, 2009 as a full-time production worker. He was given a warning and three-day suspension January 23, 2009, for throwing meat. This is a major safety violation and the claimant was warned he would be discharged for any further violations.

On March 10, 2009, the claimant was accused by Supervisor John Hall and another employee of throwing meat. He was discharged the next day by Human Resources Manager Katie Holcomb for violation of the employer's policy. The claimant denied he had thrown any meat on that occasion and maintained the witnesses had made up the story because of personal animosity.

REASONING AND CONCLUSIONS OF 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.

The claimant was discharged for allegations of throwing meat on March 10, 2009. He denied he threw any meat on that occasion. The employer did not provide testimony from any witness to the event. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of March 31, 2009, reference 01, is affirmed. Shawn Ellis is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css

