

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS L GILCHRIST
Claimant

APPEAL NO. 08A-UI-00470-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARGILL INCORPORATED
NUTRENA FEEDS**
Employer

**OC: 12/02/07 R: 02
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 9, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on January 30, 2008. Claimant participated. Employer participated through Bill Schmitt, Larry Owen and Tim Court.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time packaging technician from June 1, 2005 until December 4, 2007 when he was discharged. On November 29, claimant left his workstation before completing his task, supervisor Owen found him and questioned him. Claimant started to get agitated, flailed his arms, swore loudly at Owen, and was being very disruptive of the workplace. Owen told him to go into the QC office and cool down but did not touch him. Court stepped in, told him to stop acting childishly and claimant started “dropping f-bombs” so Court told claimant to sweep the warehouse and try to calm down. He was suspended pending review of the situation on November 30.

On July 14, 2006, employer warned claimant in writing about mistreatment of coworkers. On August 29, 2006, employer was warned for swearing and throwing bags of feed in front of an outside vendor.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

While the steps claimant is taking to overcome his anger issues are admirable and responsible, it is clear that employer's recollection of the events is credible since claimant raised his voice and swore during the hearing. To his credit, he calmed down and remained so during the remainder of the hearing. However, claimant had been warned about his temper twice in writing and multiple times verbally but still became very loud, agitated and swore resulting in disruption to the workplace on November 29. It took multiple efforts of two supervisors to calm him down after what would likely have been a minor incident of leaving the workstation to go to the office. Claimant's dramatic loss of control over his anger after having been warned multiple times is evidence of intentional misconduct. Benefits are denied.

DECISION:

The January 9, 2008, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has

worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css