

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN M BOESEN
Claimant

APPEAL NO. 13A-UI-05562-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL INCORPORATED
Employer

OC: 04/14/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Shawn Boesen filed a timely appeal from a representative's decision dated May 6, 2013, reference 01, which denied unemployment insurance benefits finding that he was discharged from work for willful destruction of company property. After due notice was provided, a telephone hearing was held on June 12, 2013. Claimant participated. The employer participated by Mr. Francis Landolphi, Hearing Representative and witness, Mr. Andy Dercks, Plant Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Shawn Boesen was employed by Cargill, Inc. from March 27, 2009 until April 19, 2013 when he was discharged from employment. Mr. Boesen was employed as a full-time barge loader and elevator worker and was paid by the hour. His immediate supervisor was Andy Dercks.

Mr. Boesen was discharged for intentional destruction of company property. Mr. Boesen had surreptitiously used a chemical defoliant to depict large pornographic images and a corresponding word conveying an inappropriate sexual message on the lawn of company grounds. The full extent of the claimant's willful destruction of company property was not initially determined because snow cover had obliterated the major portion of the depiction.

Mr. Boesen was confronted by the facility manager when the initial portion of the written message became visible. The claimant admitted that he had caused the damage and promised to repair the vandalism that he had caused. Although the claimant was given sufficient time to do so, Mr. Boesen made no efforts towards fulfilling his promise to the company. Subsequently when the remainder of the pornographic portion of the depiction became visible and it was determined that the claimant had not taken action to repair the damage that he had caused, he was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It clearly does.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence in the record unequivocally establishes intentional disqualifying misconduct on the part of this claimant. The claimant engaged in immature, willful vandalism creating obscene and pornographic depiction and accompanying message that was clearly contrary to the employer's interests and reasonable standards of behavior that the company had a right to expect from its employees.

The claimant not only engaged in intentional destructive behavior that was childish, the claimant also did not avail himself of an opportunity to save his employment by repairing the vandalism as he had promised. The evidence is clear that the claimant was discharged for intentional

misconduct in connection with his work and unemployment insurance benefits are properly withheld.

DECISION:

The representative's decision dated May 6, 2013, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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