

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALAN F BAGLEY

Claimant

APPEAL NO. 09A-UI-05594-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

**Original Claim: 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, Alan Bagley. 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:

Alan Bagley was employed by Cargill from November 4, 2002 until March 5, 2009 as a full-time production worker. During the course of his employment, he received as many as eleven warnings for poor work performance. On April 25, 2008, the employer and the union negotiated a "last chance agreement" on behalf of Mr. Bagley instead of discharging him. The agreement specified he would be discharged if he received any other disciplinary action before April 25, 2009.

The claimant's job is to drive a pallet jack in the pack off area, along with another driver. Once that area is clean, he goes to the case sealer department to pick up boxes and the other driver helps clean up in other areas around the pack off department. On March 3, 2009, the claimant's regular partner was absent and a substitute driver was assigned. After the pack off area was clean, Mr. Bagley went to the case sealer area and the substitute driver complained to Supervisor April Farley that he was not helping her.

Ms. Farley referred the matter to Assistant Human Resources Manager Jordan Webber, who reviewed his personnel file. The claimant was absent the next day, and on March 5, 2009, he was discharged for receiving another warning for poor job performance.

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 has asserted he was doing his regular job in the regular way as assigned. The complaint from the substitute driver was because he was allegedly not helping her clean other areas around the pack off department. The employer did not provide testimony from the supervisor to establish whether or not the claimant's presence in the case sealer area was outside of his assigned duties, or whether he had left some of his work undone in the pack off area before leaving to go there. Ms. Farley is still an employee of Cargill as of the date of the hearing.

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. Alan Bagley is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw