

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FLORENTINO BONILLA LOPEZ

Claimant

APPEAL NO. 08A-UI-02257-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

**OC: 02/10/08 R: 03
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Florentino Bonilla Lopez, filed an appeal from a decision dated March 5, 2008, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 24, 2008. The claimant participated on his own behalf and Ike Rocha acted as interpreter. The employer, Cargill Meat Solutions Corporation (Cargill), participated by Assistant Human Resources Manager Lauri Elliott.

ISSUE:

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

FINDINGS OF FACT:

Florentino Bonilla Lopez was employed by Cargill from September 20, 2004 until October 1, 2007, as a full-time production worker. He attended orientation where the employer's drug policy was covered, in Spanish. In addition, it is posted in Spanish in the workplace. Employees may be tested for being under the influence of drugs or alcohol and refusal to take a test is grounds for immediate discharge.

On October 1, 2007, the claimant's immediate supervisor, Balam Garcia, and his supervisor, General Foreman Mike Wright, observed the claimant while he was working. His conduct was "abnormal" and caused them to conclude he might be intoxicated. The two supervisors took Mr. Lopez to the medical department and requested he give a urine sample for drugs. He refused.

The supervisors reminded the claimant of the policy that calls for immediate discharge for refusing to take a drug test, and he still refused. Mr. Lopez believed only his immediate supervisor, Mr. Garcia, could request him to take a drug test, and since Mr. Wright was Mr. Garcia's direct supervisor, and not Mr. Lopez's, he had no authority to make the request. However, company policy says any member of management may request an employee to take a drug test under appropriate circumstances.

The claimant was discharged for refusal to take the test and the police were summoned to give him a ride home, as he refused to accept a ride from the employer.

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 erroneously believed only a direct supervisor could require him to take a drug test, but this is not correct. Even if this were correct, the claimant should have known his supervisor was assenting to the test, as Mr. Garcia was present during the entire time and never made any objection to Mr. Wright's request the claimant take the test.

Mr. Lopez had been advised of the consequences for failing to take the test and still refused. This is a violation of a company rule and deliberate refusal to follow the instructions of a supervisor. It is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of March 5, 2008, reference 01, is affirmed. Florentino Bonilla Lopez is disqualified and benefits are withheld until he has earned ten times his weekly benefit, amount provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw