

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD A MUNTZ
Claimant

APPEAL NO: 13A-UI-05066-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 04/07/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 26, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for nondisqualifying reasons. The claimant participated in the hearing with Brian Ulin. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2011. He worked full time. The employer's written policy informs employees that if they remove the employer's or another person's property from the premises, employees may be immediately discharged for theft of property.

On April 9, 2013, the claimant went to the cafeteria on his 8:00 to 8:30 p.m. break. The claimant decided he needed a slice of pizza. When the claimant picked up a slice of pizza, a co-worker distracted him by asking if he could borrow money from the claimant. The claimant went to the co-worker with the pizza and gave him some money. Within a minute or so, a cafeteria employee went up to the claimant. The claimant then remembered that he had not yet paid for the pizza. He apologized and paid for the slice of pizza.

The next day the employer discharged the claimant for stealing a slice of pizza. Before the April 9 incident, the claimant's job was not in jeopardy and he did not have any warnings. Before when other employees have forgotten to pay for food in the cafeteria right away, they were not discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence establishes the claimant did not immediately pay for a slice of pizza. He planned to pay for it right away, but became distracted when a co-worker asked to borrow some money from him. Within a minute or so a cafeteria employee approached the claimant. The claimant then remembered that he had not yet paid for the slice of pizza, apologized for not immediately paying for the pizza and then paid for the pizza. The evidence does not establish that the claimant intentionally failed to pay for the pizza. He did not commit work-connected misconduct. As of April 7, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's April 26, 2013 determination (reference 01) is reversed. The employer discharged the claimant for reasons that do not establish work-connected misconduct. As of April 7, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css