

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEFFREY A STONE**  
Claimant

**CARGILL KITCHEN SOLUTIONS INC**  
Employer

**APPEAL 15A-UI-05735-KC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/26/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 12, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 23, 2015. The claimant participated. The employer participated through Holly Platts, Human Resources Manager, who served as representative and witness. Human Resources Associate Garrett Keiffer was present but did not testify.

**ISSUE:**

Was the claimant discharged for work-related, disqualifying misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a processing team member from June 6, 2005, until he was separated from employment on April 29, 2015. He worked in a food production operation.

On April 22, 2015, the claimant vomited at work. He changed his smock, gloves and hair-net. Then he returned to work. He did not inform a member of management that he had been ill. Later during the same shift, he left the line again and was seen vomiting in a waste receptacle. He did not report the occurrence. Ms. Charmin, a quality assurance employee who observed him vomiting, told him to go home. Production on the line was stopped and approximately \$30,000 worth of product was held pending an assessment of possible contamination. The claimant went home. Not all of the product was destroyed due to contamination. No specific value was identified for the lost product.

On April 27, 2015, the claimant admitted that he had vomited at work on April 22, 2015 without informing management. On April 28, 2015, the claimant met with members of management and human resources. He received and signed a personal action record which indicated the claimant returned to work on a production line on April 22, 2015, without informing management that he was ill and had vomited.

Employees are informed about the requirements of maintaining a hygienic food production operation upon hire, during monthly meetings, and at annual refresher training. The claimant last received annual training on the topic in May 2014. The employer's policy requires employees who are either vomiting or have diarrhea to stay home. If an incident involving either vomiting or diarrhea occurs at work, the employee is directed to leave the line, report immediately to a member of management, and leave the premises. The claimant acknowledged receipt of the employer's handbook.

The claimant did not report to management either incident of vomiting on April 22, 2015. The employer's policy provides that failure to adhere to personal hygiene standards, including exclusion from food-handling areas under Rule 16, may lead to discipline up to and including discharge.

The claimant received performance improvement plans in 2008 and 2012 involving retention of safety knowledge in the area of food production. He required multiple attempts to complete food safety quizzes with a passing score. Prior to his termination, the claimant was not informed his job was in jeopardy for the reason given at termination.

#### **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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The claimant was aware of the employer's food safety policies. He had been employed in the facility since 2005. During his shift on April 22, 2015, he chose to continue working after the first incidence of vomiting, in violation of the food safety policies. He informed no one of his physical condition and continued to work. Only after another co-worker observed him vomiting the second time was the issue brought to the employer's attention.

The employer has presented substantial and credible evidence that the claimant violated the food safety policies of the employer, after several years in which he had specific training on avoiding such events. This is evidence of deliberate behavior in violation of company policy, procedure, or prior warning. The employer's request was not unduly burdensome or unreasonable. The claimant did not rebut the employer's reason for the separation and did not provide an adequate reason for his failure to follow the employer's protocol regarding food safety where an employee experiences vomiting or diarrhea. Workers in the human food production and processing industry reasonably have a higher standard of care required in the performance of their job duties to ensure public safety and health. Benefits are denied.

**DECISION:**

The May 12, 2015, (reference 01) unemployment insurance 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.

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Kristin A. Collinson  
Administrative Law Judge

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Decision Dated and Mailed

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