

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN H SHEIMO**

Claimant

**APPEAL NO. 16A-UI-12469-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL KITCHEN SOLUTIONS INC**

Employer

**OC: 10/23/16**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Cargill Kitchen Solutions, Inc. filed a timely appeal from a representative's decision dated November 9, 2016, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that the employer did not furnish sufficient evidence to show misconduct. After due notice was provided, a telephone hearing was held on December 8, 2016. Claimant participated. The employer participated by Ms. Danille Trolano, TALX UCM Services Representative, and Ms. Holly Platts, Human Resource Manager.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: John Sheimo was employed by Cargill Kitchen Solutions, Inc. from December 22, 2001 until October 26, 2016 when he was discharged by the employer. Mr. Sheimo was employed as a full-time warehouse worker and was paid by the hour. His last immediate supervisor was Mr. Rick Rasmussen.

Mr. Sheimo was discharged on October 26, 2016 based upon an incident that had taken place on October 25, 2016. On that date, the claimant was operating a palletizing robot and the machine was malfunctioning because cases coming down the conveyor line needed to be repositioned. Because the palletizing robot was malfunctioning, cartons on the conveyor were backing up and spilling over into a hallway area.

Because the claimant was not working directly on the components of the palletizing machine, he temporarily disabled the machine activating a photocell on the apparatus. An assistant safety supervisor and a consultant were nearby and went to the area when the machine was shut down. The claimant was instructed to use the lock-out procedure. Within a few moments, the machine was again malfunctioning and the claimant needed to immediately clear it by again re-aligning boxes. On this occasion Mr. Sheimo placed a locking device on the machine but did

not close the lock. The claimant was again reminded to follow the lock-out procedure by securing the lock. When a third alarm sounded, it was discovered that although the claimant had placed a lock on the machine as required, he had left the key in the lock and had not removed it as required by policy.

Mr. Sheimo was aware of the company's lock-out policies but had not fully complied with all the required portions of the policy because the machine was rapidly shutting down and malfunctioning and the claimant was required to quickly get the production line moving again because products were backing up and spilling over onto floors. Mr. Sheimo believed that his actions were reasonable under the circumstances because the machine had been disabled. Claimant had left the key in the lock of the device so it would quickly be available and minimize any delay. The claimant was required to wear heavy gloves while performing his duties and placing the key in his pocket would have further delayed him as he attempted to clean up the backlog that was occurring. All three incidents took place in rapid succession.

Although the claimant had not been previously warned or counseled about any violations of company policy during the time he was employed by the company, the employer chose to escalate to a discharge because he had violated the lock-out rule three times that day.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged from employment under non disqualifying conditions.

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).

The employer has the burden of proof in establishing job disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not always serious enough to warrant a denial of unemployment insurance benefits. Such misconduct must be "substantial." When based upon carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. See Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

An employer may discharge an employee for any number of reasons, or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that job separation.

Based upon the evidence in the record, the administrative law judge concludes that the claimant's conduct on October 25, 2016 was an isolated instance of poor judgment when the machine was malfunctioning and boxes were backing up and spilling onto the floor and the claimant was attempting as quickly as possible to remedy the problem. The claimant took stop gap measures to stop the problem that was rapidly escalating. The three incidents took place rapidly and the claimant was attempting to heed the caveats given by the assistant safety manager as the malfunctions were continuing.

Based upon the circumstances that were occurring at the time and inasmuch as the employer had not previously warned the claimant about any issues, the employer has not established that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure or prior warnings. The claimant was attempting to quickly resolve an escalating conveyor issue. His failure to exercise good judgment was an isolated instance of poor judgment in an otherwise unblemished employment record.

The question before the administrative law judge is not whether the employer had a right to discharge the claimant for this reason but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Mr. Sheimo may have been a sound decision from a management viewpoint, intentional misconduct sufficient to warrant the denial of unemployment insurance benefits has not been shown. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated November 9, 2016, reference 01, is affirmed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

pjs/pjs