

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CURTIS R BENJAMIN**  
Claimant

**APPEAL NO: 11A-UI-02268-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**  
Employer

**OC: 01/09/11**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Cargill Meat Solution Corporation (employer) appealed a representative's February 17, 2011 decision (reference 01) that concluded Curtis R. Benjamin (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 22, 2011. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on October 28, 2008. He worked full time as a general laborer at the employer's Ottumwa, Iowa facility, working on the second shift starting at either 1:50 p.m. or 3:50 p.m., five or six days per week. During weeks he worked five days starting at 1:50 p.m., he worked ten hour shifts; during weeks he worked six days starting at 3:50 p.m., he worked eight hour shifts. His last day of work was December 28, 2010. The employer suspended him that day and discharged him on January 7, 2011. The reason asserted for the discharge was failing an alcohol test.

After getting off work at the end of his shift on the morning of December 28, the claimant did consume a substantial amount of alcohol between about 1:30 a.m. and 8:00 a.m. He then went to bed and slept before reporting for work for his 1:50 p.m. shift. At some point during the shift a supervisor indicated it was suspected that the claimant was under the influence of alcohol, so he was taken to the nurse's office for a mouth swab, and from there was taken to a local hospital for further testing. The claimant was advised on January 7 that the result of that testing was positive, and that he was discharged.

The employer did not provide testimony to establish that it had proper grounds to establish “reasonable suspicion” to order the testing, that its management personnel had proper training to identify reasonable suspicion, the actual test results, the qualifications of the testing personnel, or whether there were provisions in its policies properly identifying what result levels could be deemed “positive,” or whether there was a provision for rehabilitation for an employee who in fact did have a positive alcohol result.

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

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right to terminate the claimant’s employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a; 871 IAC 24.32(1)a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

The reason cited by the employer for discharging the claimant is violation of the employer’s policy through a positive alcohol test. In order for a violation of an employer’s drug or alcohol policy by a positive drug or alcohol test to be disqualifying misconduct, it must be based on a test performed in compliance with Iowa’s drug and alcohol testing laws. Harrison v. Employment Appeal Board, 659 N.W.2d 581 (Iowa 2003); Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999). The Eaton court said, “It would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits.” Eaton, 602 N.W.2d at 558. Even though the claimant may have admittedly engaged in foolish and risky behavior hours prior to his shift, the employer has not established that it substantially complied with the alcohol testing regulations. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's February 17, 2011 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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