

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PHILLIP A CAVE**  
Claimant

**APPEAL NO: 09A-UI-07537-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**  
Employer

**OC: 04/19/09**  
**Claimant: Appellant (2)**

Section 9 6.5-2- a- Discharge

**STATEMENT OF THE CASE:**

Phillip A. Cave (claimant) appealed a representative's May 11, 2009 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of Cargill Meat Solutions Corporation (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 10, 2009. The claimant participated in the hearing. Rachel Watkinson, a human resource associate, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer on November 13, 2007. The claimant worked as a full-time production employee. The employer informs employees that when an employee accumulates ten attendance points in a rolling calendar year, the employer may discharge the employee or give the employee a last-chance agreement.

As of January 7, 2009, the claimant had accumulated 10.25 attendance points. The claimant is a single parent who starts work at 5:00 a.m. The claimant has a caretaker come to his home before he goes to work. During his employment, the claimant accumulated some attendance points for reporting to work late because of child care issues. When the employer gave the claimant the last-chance agreement on January 7, 2009, the employer explained that if he accumulated any more attendance points before July 7, 2009, he would be discharged.

On April 20, 2009, the claimant's child care provider was late getting to his home. As a result of having to wait until his babysitter arrived, the claimant was 20 minutes late for work on April 20, 2009. As a result of being late for work, the claimant violated his January 7, 2009 last-chance agreement by reporting to work late. The employer discharged him on April 20, 2009, for excessive absenteeism.

## **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 section 96.5-2-a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

On April 20, the claimant did not intentionally report to work 20 minutes late. Instead, he could not leave his home until the childcare provider arrived. Unfortunately, the childcare provider arrived late. Since this was the first attendance issue the claimant had since January 7, the evidence reveals the claimant took the necessary steps to work as scheduled. The claimant had no control over the childcare provider arriving at his home late. Based on the facts in this case, the claimant did not commit a current act of work-connected misconduct.

The employer established business reasons for discharging the claimant, but these reasons do not amount to work-connected misconduct. As of April 19, 2009, the claimant is qualified to receive benefits.

## **DECISION:**

The representative's May 11, 2009 decision (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit a current act of work-connected misconduct. As of April 19, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs