

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROGER J VAUGHN**  
Claimant

**APPEAL NO. 07A-UI-10015-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**  
Employer

**OC: 11-19-06 R: 03  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 16, 2007, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on November 14, 2007. The claimant did participate. The employer did participate through Laurie Elliott, Human Resources Associate.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a production worker full time beginning January 30, 2007 through September 21, 2007 when he was discharged.

On September 21 the claimant was running the injector machine which injects the bellies with a curing solution when the machine jammed. The claimant turned the machine off as soon he heard it jam. The claimant could not have turned the machine off any faster than he did. The claimant had not received any warnings that his job was in jeopardy and performed the work to the best of his ability. He was discharged later that same day for allegedly delaying in shutting off the machine once a jam had occurred.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

871 IAC 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.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. IDJS*, 386 N.W.2d 552 (Iowa App. 1986). The employer has not established that the claimant delayed in shutting off the machine as soon as he heard it jam. Nor has the employer established that the claimant did anything intentionally to jam the machine. The employer's allegation that a maintenance worker who repaired the machine attributed the jam to operator error is not persuasive in establishing misconduct as the maintenance worker did not testify nor did anyone on behalf of the employer provide any specifics to establish how the claimant allegedly committed misconduct. Inasmuch as he did attempt to perform the job to the best of his ability but was unable to meet the employer's expectations, no intentional misconduct has been established, as is the employer's burden of proof. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed.

**DECISION:**

The October 16, 2007, reference 03, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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