

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENT FRANKENFELD
Claimant

APPEAL NO: 11A-UI-11365-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL INCORPORATED
Employer

**OC: 08-07-11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 26, 2011, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on September 21, 2011. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer or was discharged for disqualifying job misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production technician for Cargill from August 16, 2010 to August 8, 2011. The claimant's previous job experience was in the banking and financial fields and he had difficulty adapting to the factory environment. He did not have any previous experience with pumps, tanks, valves or pipes and was not knowledgeable about safety procedures such as the lock out tag out process. As a result he was not able to meet the employer's safety standards. On July 6, 2011, the employer placed him on a 60-day performance improvement plan (PIP) in an attempt to allow the claimant to become more comfortable and acclimated to the various safety procedures. The employer had the claimant work with another member of his team to practice the lock out tag out procedure, spend time with a contractor to learn how to fix various pumps and valves, and work with other team members to increase his base of knowledge regarding safety related issues and standards. Within approximately 10 days of being placed on the PIP, while the claimant was trying to adhere to the plan, he realized he simply could not increase his knowledge of safety issues to the level required by the employer because he was not picking up critical issues required to perform safety functions to keep everyone, including himself, safe. The job was beyond his experience and aptitude. The claimant believed he was a burden to the rest of his team members and had not learned the job as well in nearly one year of employment as two other team members hired after him. The employer provided feedback and attempted to work with him but had agreed the claimant's employment would be terminated September 6, 2011, if his

performance was not meeting the employer's expectations. The claimant concluded that because the job was beyond his capabilities, comfort level, understanding and work experience, he should resign prior to the employer terminating his employment and the employer agreed. The claimant offered to stay until the employer could find a replacement but the employer declined his offer and the claimant's employment ended August 8, 2011.

REASONING AND CONCLUSIONS OF LAW:

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

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While intentional misconduct is disqualifying, 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). Inasmuch as the claimant 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). Therefore, benefits are allowed.

DECISION:

The August 26, 2011, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs