

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSARIO A BACA ANDRADE
Claimant

APPEAL NO. 08A-UI-03109-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 02/10/08 R: 03
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Rosario Andrade filed an appeal from a representative's decision dated March 21, 2008, reference 01, which denied benefits based on his separation from Cargill Meat Solutions Corporation (Cargill). After due notice was issued, a hearing was held by telephone on April 14, 2008. The employer participated by Lori Elliott, Assistant Human Resources Manager. Mr. Andrade did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Andrade was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Andrade was employed by Cargill from February 7, 2006 until February 11, 2008 as a full-time production worker. He was discharged because of his attendance.

Mr. Andrade called on February 2, 2008 to report that he would be late arriving at work. He did not appear for work or re-contact the employer regarding his intentions. He received a written warning on February 7. He called again on February 8 to indicate that he would be late to work. He again failed to appear or call the employer a second time to report that he would be absent rather than late. The absence of February 8 caused him to exceed the employer's attendance standards and, therefore, he was discharged on February 11, 2008. Mr. Andrade had been verbally warned about his attendance on January 31, 2008. The reason for his absences up to that point is unknown. Attendance was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321

N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

Mr. Andrade's absences of February 2 and 8 are sufficient, standing alone, to establish disqualifying misconduct. He had been verbally warned about his attendance on January 31. In spite of the warning, he failed to appear for work just two days later. Although he called to say he would be late, he did not call the employer back once his plans changed. As a result, he received another warning on February 7. The warning of February 7 should have been sufficient to put him on notice that his continuing employment with Cargill was in jeopardy. However, Mr. Andrade repeated the same conduct on February 8 that had caused him to receive a written warning on February 7.

The evidence does not establish any good reason for Mr. Andrade's failure to contact the employer once he knew he would be absent rather than late on February 2 and February 8. An employer is hampered in its ability to plan production if it does not know which employees are going to appear for work. Given the warnings Mr. Andrade received, the administrative law judge concludes that his absences of February 2 and February 8 constituted a substantial disregard of the standards the employer had the right to expect. For the reasons stated herein, benefits are denied.

DECISION:

The representative's decision dated March 21, 2008, reference 01, is hereby affirmed. Mr. Andrade was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css