

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SOLOMON G HAILU
Claimant

APPEAL NO. 12A-UI-03671-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 03/11/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Solomon Hailu (claimant) appealed a representative's April 9, 2012 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Cargill Meat Solutions Corporation (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 25, 2012. The claimant participated personally through Berhe Abraha, interpreter. The employer participated by Kristie Horton, human resources associate.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on March 2, 2011, as a full-time production worker. The claimant signed for receipt of the employer's procedures on February 2, 2012. These procedures were translated to the claimant by someone who did not speak his language. On August 9, 2011, the employer issued the claimant a written warning and three-day suspension for failure to wear proper protection while working with a wizard knife resulting in an injury to himself.

In February 2012, the employer placed the claimant on a new machine. Training was offered, but the claimant did not speak the language of the translator. He did not know how to turn the machine off. On March 7, 2012, the claimant was working with a machine when the machine jammed. He pulled on a wire trying to free the jam without turning the machine off. The machine caught his glove and he injured the tip of his finger. He sought treatment from the nurse. The employer terminated the claimant on March 8, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of his lack of training. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 9, 2012 decision (reference 01) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw