

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY E PETARY
Claimant

APPEAL NO. 11A-UI-15977-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 10/30/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (employer) appealed a representative's December 5, 2011 decision (reference 02) that concluded Terry Petary (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 18, 2012. The claimant was represented by Timothy Martin, organizer and representative of Local 230, and participated personally. The employer participated by Ben Wise, hiring supervisor.

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 April 24, 2007, as a full-time production worker. The claimant signed for receipt of the employer's handbook on April 25, 2007. The handbook contained the employer's drug and alcohol policy.

On September 15, 2011, the claimant was involved in a work accident and the employer had the claimant submit to a post-accident drug and alcohol test. The medical examiner notified the claimant over the telephone that he tested positive for use of marijuana. On September 22, 2011, the claimant and employer entered into a last chance agreement that indicated the claimant would seek treatment and test negative on random drug and alcohol tests for two years.

On October 24, 2011, the claimant was involved in another accident at work. He submitted to post-accident testing. On November 6, 2011, the medical examiner told the claimant over the telephone that he tested positive for marijuana usage. On November 7, 2011, the employer terminated the claimant. No one ever provided the claimant with written results of the either drug test.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not 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). The claimant was terminated for violating the employer's drug policy. The claimant knew that any positive results on a post accident drug test would result in termination. The employer is entitled to take post accident drug testing.

Iowa Code section 730.5(9) requires that a written drug screen policy be provided to every employee subject to testing. Iowa Code section 730.5(7)(i)(1) mandates that an employer, upon a confirmed positive drug or alcohol test by a certified laboratory, notify the employee of the test results by certified mail and the right to obtain a confirmatory test before taking disciplinary action against an employee. The employer failed to give the claimant notice of the test results according to the strict and explicit statutory requirements. Benefits are allowed.

DECISION:

The representative's December 5, 2011 decision (reference 02) is affirmed. The employer has not met its burden proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw