

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ADRIANO M NELSON**  
Claimant

**CENTRUM VALLEY FARMS LLP**  
Employer

**APPEAL 20A-UI-11475-S1-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/18/19**  
**Claimant: Appellant (2/R)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Adriano Nelson (claimant) appealed a representative's September 9, 2020, decision (reference 03) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with the Centrum Valley Farms (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 10, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issues include whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from February 3, 2020, through June 3, 2020, as a full-time sanitation worker on the overnight shift. The employer did not issue him any attendance occurrences or written warnings.

On his last shift, the claimant cleaned three machines. The posted signage stated workers had until 1:30 a.m. to clean machinery. After this, general cleanup of the floors started. The claimant's machines were very dirty. He knew they had to be cleaned to pass United States Department of Agriculture inspection.

Just after midnight, the claimant was working on his last machine. Other workers appeared to have finished cleaning their machines. His supervisor told him to finish up and start general cleanup of the floors. The claimant told the supervisor that the machine would not pass inspection if he did not clean it properly. He was not ready to "blow out" the machine. The supervisor yelled at him and walked away. The supervisor did not assign other workers to help the claimant.

Later, the supervisor returned and the claimant was hurrying to finish with the help of other workers. The claimant had blown out the machine and returned the panels. The supervisor yelled at and reprimanded the claimant in front of the other workers. The claimant responded that the machine needed to pass inspection and so he cleaned it properly within the time allotted. The supervisor told the claimant to clock out, go home, and leave his key card.

The claimant knew the rule that said he could not return to the worksite until he spoke with someone in the human resources department. On June 3, 2020, the claimant called the department but no one answered. The claimant drove an hour to the corporate office but it was closed. He called the number on the door but no one answered his calls. The claimant called and sent texts to his supervisor. The supervisor answered the text by saying the claimant could not return until someone in human resources authorized his return. The claimant assumed he was terminated.

The claimant filed for unemployment insurance benefits with an effective date of August 18, 2019. His weekly benefit amount was determined to be \$481.00. The claimant was disqualified from receiving unemployment insurance benefits in 19A-UI-07251-JE due to a discharged for misconduct from Cargill Kitchen Solutions. That decision was affirmed by the Employment Appeal Board. Since that decision the claimant has earned \$12,407.00 in wages from Centrum Valley Farms. The claimant subsequently filed for unemployment insurance benefits with an effective date of August 16, 2020. His weekly benefit amount was determined to be \$493.00.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

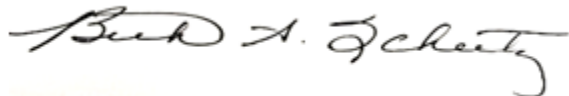
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The claimant followed the employer's rules and was terminated for doing so. The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The issue of whether the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount since the Cargill Kitchen Solutions separation is remanded for determination.

**DECISION:**

The representative's September 9, 2020, decision (reference 03) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

The issue of whether the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount since the Cargill Kitchen Solutions separation is remanded for determination.



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Beth A. Scheetz  
Administrative Law Judge

November 17, 2020  
Decision Dated and Mailed

bas/mh