

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM J FINLEY
Claimant

APPEAL NO. 08A-UI-02339-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

**OC: 01/06/08 R: 03
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (Cargill) filed an appeal from a representative's decision dated February 28, 2008, reference 01, which held that no disqualification would be imposed regarding Adam Finley's separation from employment. After due notice was issued, a hearing was held by telephone on March 24, 2008. Mr. Finley participated personally. The employer participated by Lauri Elliott, Assistant Human Resources Manager.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Finley was employed by Cargill from May 2 until December 13, 2007 as a full-time production worker. He was discharged because of his attendance. Mr. Finley suffered a seizure while at work and the company nurse would not allow him to continue working until he received a release from his doctor. He missed approximately 12 days of work waiting to be seen by a doctor so that he could obtain the necessary release. On July 16, the employer and Mr. Finley entered into a "last-chance" agreement concerning his employment.

The "last-chance" agreement provided that Mr. Finley could be discharged if he missed time from work prior to January 18, 2008. He was absent on November 19 and received a verbal warning. He was also absent on December 3 and December 5. He could not get to work on December 5 because of an ice storm. All of Mr. Finley's absences were properly reported to the employer. All were due to illness except that of December 5. Attendance was the sole reason for the December 13, 2007 discharge.

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. The administrative law judge is not bound by an employer's designation of an absence as unexcused.

All of Mr. Finley's absences were properly reported to the employer. All of his absences, except for that of December 5, were due to illness. Absences due to illness are excused as illness is reasonable grounds for missing work. Mr. Finley's absence of December 5 was due to an ice storm, which was an unexpected circumstance beyond his control. Even if the administrative law judge were to conclude that the absence of December 5 should be considered unexcused, it would not be sufficient to result in disqualification from benefits. The one absence due to unavoidable circumstances would not represent a substantial disregard of the employer's standards.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to establish disqualifying misconduct. While the employer may have had good cause to discharge Mr. Finley, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated February 28, 2008, reference 01, is hereby affirmed. Mr. Finley was discharged by Cargill but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css