

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JORGE A BANUELOS

Claimant

APPEAL NO. 09A-UI-06664-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

OC: 03/22/09

Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Jorge Banuelos, filed an appeal from a decision dated April 28, 2009, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 26, 2009. The claimant participated on his own behalf. The employer, Cargill, participated by Human Resources Associate Rachel Watkinson.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Jorge Banuelos was employed by Cargill from April 18, 2008 until March 8, 2008 as a full-time technical services person. Part of his job responsibilities was to record the temperature of carcasses in the cooler, record it on a form, then sign and date it. On March 8, 2008, Superintendent Chris Sheehan took the temperature of the carcasses in a cooler and found them to be between 40 and 49 degrees. This is too high and could have compromised the quality of the product. Mr. Banuelos had recorded the temperatures an hour earlier as being between 30 and 37 degrees, which is an acceptable range.

The superintendent contacted technical services and the human resources. Human Resources Assistant Lori Elliot interviewed Mr. Sheehan and two other superintendents who had witnessed the taking of the second round of temperatures. The claimant was not interviewed but sent home for three days, then summoned back to the facility where he was fired for falsifying company records.

The claimant denied falsifying any of the temperatures in the records. He recorded the temperature as it showed on the thermometer. The thermometer was calibrated weekly by the laboratory.

REASONING AND CONCLUSIONS OF LAW:

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 to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case the employer has not offered any evidence in the form of the documents alleged to have been falsified and no eye-witness testimony from any of the superintendents. Only hearsay evidence was presented. At least one of the superintendents is still employed by Cargill and working at the time of the hearing.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of April 28, 2009, reference 02, is reversed. Jorge Banuelos is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css