

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL R STOCK
Claimant

APPEAL NO. 09A-UI-15365-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNICCO SERVICE COMPANY
Employer

**Original Claim: 09/13/09
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Michael Stock filed an appeal from a representative's decision dated October 5, 2009, reference 01, which denied benefits based on his separation from UNICCO Service Company (USC). After due notice was issued, a hearing was held by telephone on November 13, 2009. Mr. Stock participated personally and offered additional testimony from Bill Walker. The employer participated by Becky Helwig, Human Resources Generalist

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Stock was employed by USC from October 27, 2008 until September 9, 2009 as a full-time sanitation technician. On September 2, 2009, he was working in the reprocess area. Product that does not meet standards is placed in this area to be reprocessed. The product will be in either 50-pound or 2,000-pound bags. Product that is to be reprocessed is usually labeled as such, but not always. It is the employer's preference that the smaller bags be placed in the machine for reprocessing first. However, workers routinely alternate between the two sizes.

On September 2, there were 2,000-pound bags of product near the reprocessing area that were not intended for reprocessing. There were no labels on the bags giving specific instructions as to what was to be done with it. Mr. Stock dumped the bags into the machine to be reprocessed. The bags were not to be reprocessed and, as a result, the 20,000 pounds Mr. Stock dumped for reprocessing resulted in a \$20,000.00 loss. He was notified of his discharge on September 9. The above matter was the sole reason for the 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). Mr. Stock was discharged because he dumped product for reprocessing when it was not intended for reprocessing. The employer's evidence failed to establish that he knew or should have known the 20,000 pounds of product were not intended for reprocessing. The bags were in an area near reprocessing, which could reasonably lead to the conclusion that they were intended for reprocessing. Although there was no label directing it to be reprocessed, the bags intended for reprocessing do not always contain such a label.

At most, Mr. Stock's actions constituted an isolated good-faith error in judgment. Conduct so characterized is not considered misconduct. See 871 IAC 24.32(1). It was certainly the employer's prerogative to discharge Mr. Stock. However, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated October 5, 2009, reference 01, is hereby reversed. Mr. Stock was discharged by USC, but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw