

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PHILIP M PARRISH**  
Claimant

**APPEAL NO. 10A-UI-00066-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**  
Employer

**Original Claim: 11/22/09  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated December 22, 2009, reference 01, that held the claimant was discharged for misconduct on November 22, 2000, and that denied benefits. A telephone hearing was held on February 12, 2010. The claimant, and his Attorney, Richard Gaumer, participated. Alicia Alonzo, HR Generalist, participated for the employer.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds that: The claimant began full-time employment on September 2, 1995, and last worked for the employer as a full-time operations supervisor on November 4, 2009. The claimant was suspended on November 4 and discharged on November 22, 2009 for a serious violation of the employer's food/re-work policy.

The claimant received instructions from a first-shift supervisor to re-work food combos that had been tagged by Quality Assurance (QA) for a suspected contamination. The QA concern was that a machine malfunction may have caused some plastic to have been mixed with the meat product in the tagged combos.

A combo is a plastic lined cardboard container about the size of a washing machine tub. The first-shift instruction was to ensure the proper function of the machine to process the tagged combos, check for contamination in the combo, and mix fresh meat with it. The claimant checked with the maintenance department to confirm the machine repair; and upon cleaning and inspection, supervised the meat processing.

The claimant removed the tags from the combos for processing, but he segregated the meat combos that contained the tagged and fresh meat product for QA inspection prior to shipping.

The claimant and his four-member team found no contamination in any of the combo product. The claimant was suspended that day and later discharged for removing the tags, as the employer discarded the product, which caused a \$6,000 loss of meat product.

### **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 administrative law judge concludes that the employer failed to establish misconduct in the suspension and discharge of the claimant on November 22, 2009.

The claimant followed the first-shift instruction in how to handle the tagged meat combos, which appears to be in conflict with the food safety policy. While the policy violation is considered to be serious based on the financial loss to the employer, this is an isolated incident of a 14-year employee-supervisor that does not constitute job disqualifying misconduct when viewing the record as a whole. While the claimant should have checked with QA about how he was instructed to handle the tagged combos in light of the re-work policy, his failure to do so is an isolated instance of poor judgment.

**DECISION:**

The decision of the representative dated December 22, 2009, reference 01, is reversed. The claimant was not discharged for misconduct in connection with employment on November 22, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw