

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**URIEL GALLEGOS**  
Claimant

**APPEAL NO. 12A-UI-06534-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**  
Employer

**OC: 05/06/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated May 25, 2012, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on June 27, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Patricia Vargas. Ben Wise participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full-time for the employer as a production worker from November 8, 2010, to May 9, 2012.

On May 9, 2012, the claimant met with the plant superintendent and union representative because he was being issued a warning for having six attendance points. The claimant's primary language is Spanish, but no interpreter was involved in the hearing. The claimant and the superintendent got into a disagreement about the claimant signing the attendance warning, because the claimant said he had doctor's excuses for some of the points and wanted to bring them in before signing the warning. The superintendent insisted that he sign the warning at that time. When the claimant declined to sign, the superintendent became angry and raised his voice at the claimant. The claimant asked the superintendent to stop raising his voice because it brought back memories of his stepfather putting a gun to his head to force him to sell drugs. The superintendent misunderstood the claimant's comment and accused the claimant of threatening him. The claimant denied threatening him and signed the paper. The claimant was taken to the human resources office and the human resources director discharged him for violating the employer's violence in the workplace policy.

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

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly about the comment he made. The employer's representative was unaware of the actual comment that was made and only knew that the superintendent had viewed the comment as a threat. It appears more likely that the superintendent misunderstood the comment. No willful and substantial misconduct has been proven in this case.

## **DECISION:**

The unemployment insurance decision dated May 25, 2012, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/kjw