

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALMON J HARE**  
Claimant

**APPEAL NO. 09A-UI-14846-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**  
Employer

**Original Claim: 09/13/09  
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated October 1, 2009, reference 02, which denied benefits based upon his separation from Cargill Meat Solutions. After due notice was issued, a telephone hearing was scheduled for and held on November 3, 2009. Mr. Hare participated personally. Participating as a witness/representative was Brian Ulin, union representative. The employer participated by Alicia Alonzo and Mike Wright, general foreman.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Almon Hare was employed by Cargill Meat Solutions as a full-time production worker from April 4, 2006, until September 15, 2009, when he was discharged from employment.

The claimant was discharged based upon an incident that occurred on September 11, 2009. At that time, a quality assurance technician personally observed Mr. Hare urinating in a company floor drain in a meat holding area near racks of unprotected meat. Because the claimant's conduct was considered to be a flagrant violation of company rules, potentially contaminating company product, and subjecting the company to USDA violations, a decision was made to terminate Mr. Hare for his conduct although he had not been previously warned or counseled.

It is the claimant's position that he urinated in the drain of the meat holding area because he had a sudden urge to urinate and did not believe that he would be able to hold his urine until he could reach bathroom facilities some distance away through production areas. It was the claimant's belief that he might soil himself if he attempted to reach a bathroom area and thus would have contaminated other production areas. Mr. Hare takes a prescription diuretic and believes that his exposure to extremes of hot and cold may have heightened the sense of urgency for urination.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes sufficient misconduct to warrant the denial of unemployment insurance benefits. It does.

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 evidence in the record establishes that Mr. Hare was observed by a quality assurance technician urinating in a floor drain in a meat holding area of the Cargill Meat Solutions facility on September 11, 2009. The matter was immediately reported to company management, as the quality assurance technician believed that Mr. Hare's actions not only violated company policy but threatened to contaminate meat products being held in the area. The claimant does not deny the allegation.

Employees who are having a medical issue or who are taking prescription medications that may affect their work are expected to report these matters to the company nurse so that appropriate action can be taken by the company to ensure the safety of the worker and the safety of the company's product. Mr. Hare, it appears, did not disclose to the company that he was taking a prescription diuretic or that he may have to urinate spontaneously with the physical urge to do so. On the night in question, Mr. Hare, the evidence established, was working shorthanded and was attempting to quickly perform his duties so that additional work would not be required the following day. The evidence in the record does not establish that the work requirements were

such so as to require the claimant to work extensive periods of time without a break if necessary. Reasonable alternatives were available to the claimant. The claimant could have reported his medical condition to the company nurse, which would have allowed the company to take remedial action to ensure Mr. Hare had the opportunity to take sudden bathroom breaks if necessary. Or, in the alternative, the claimant could have paced his work so as to allow a bathroom break if it became necessary. In this case, the claimant did not attempt to reach bathroom facilities but instead chose to urinate in the floor drain near unprotected meat, subjecting the employer to potential loss of product and/or violations of USDA sanitation requirements. Benefits are withheld.

**DECISION:**

The representative's decision dated October 1, 2009, reference 02, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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