

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CORY D HOUSER
Claimant

CARGILL INCORPORATED
Employer

APPEAL 15A-UI-12968-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/01/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 20, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 11, 2015. Claimant participated. Employer participated through (representative) Leann Shehan, Supervisor and Kristin Parks, Human Resources Manager. Employer's Exhibits One and Two were entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a production technician beginning on May 20, 2015 through November 3, 2015 when he was discharged. As part of learning his new job duties the claimant was required to attend classes and then to pass a test on the information presented in the class or training. The claimant found the answer key to the test on the internal R drive and used it to complete a test he was required to pass. The employer was alerted to this because the claimant's answers to the test questions were almost identical to the answer key. When initially asked by the employer if he had the answer key, the claimant denied having the key. Later he admitted that he had found the answer key online and that another employee, who was in a leadership position, had told him it was acceptable to use the answer key to take the test. The employer suspended the claimant on October 29 with pay while they investigated. During the investigation the claimant offered the answer key to another employee who refused to use it. The claimant never checked with his supervisor to see if he was allowed to use the answer key while taking the test. The claimant had been given a copy of the employer's policies and procedures and knew he was obligated to be honest with his employer in his dealing with them.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, Id. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's

appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, Id.

The claimant was not a credible witness. The administrative law judge is not persuaded that the employer ever offered or allowed employees to use the answer key in taking the test. There would be no point in testing employees if they were allowed to have the test questions and answers prior to even taking the test. The claimant's initial denial to the employer that he did not have the test questions and answers indicates that he knew he was not allowed to have such information. The claimant demonstrated to the employer that he was dishonest as a new employee. Under these circumstances the employer could not trust him to be honest in his future dealings. The employer has met their burden of proof to establish disqualifying misconduct. Benefits are denied.

DECISION:

The November 20, 2015, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css