IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JOE J GLANTZ
Claimant

CARGILL MEAT SOLUTIONS CORPORATION
Employer

APPEAL NO. 12A-UI-00131-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/20/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cargill Meat Solutions (employer) appealed a representative's December 30, 2011 decision (reference 01) that concluded Joe Glantz (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 31, 2012. The claimant was represented by Phil Miller, Attorney at Law, and participated personally. The employer participated by Ben Wise, Hiring Supervisor; Paul Kortman, Human Resource Manager; and Pat West, Plant Engineer. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 23, 2010, as a full-time maintenance supervisor. The claimant signed for receipt of the employer's handbook on August 23, 2010. On June 29, 2011, the employer issued the claimant a written warning for leaving for a non-approved vacation. The employer told the claimant to take his vacation before June 2011, but would not approve the claimant's requests for vacation. The employer gave him special approval to take his vacation in June 2011, but then would not allow the claimant to take vacation. The claimant finally took the vacation without approval because of health issues due to work stress. The employer notified the claimant that further infractions could result in termination from employment.

On September 27 and October 26, 2011, the employer issued the claimant a Performance Improvement Plan for failure to develop softener procedures for operators. The employer notified the claimant that further infractions could result in termination from employment. The claimant was doing the job of two supervisors and asked for help. He could not complete the work the employer required even though he worked 10 to 14-hour days. He tried to find information about the softeners and asked for help from others. No one gave the claimant any

information about the softeners. On November 17, 2011, the employer terminated the claimant for failure to develop softener procedures for operators.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of the extraordinary workload and lack of information to complete the task. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's December 30, 2011 decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs