

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 06A-UI-00377-DWT
OC: 12/04/05 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Kevin L. Archer (claimant) appealed a representative's January 6, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Cargill Meat Solutions Corporation (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 26, 2006. The claimant participated in the hearing with his attorney, Philip Miller. Erica Bleck, a human resource associate, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 13, 1993. The claimant worked as a full-time production worker. The claimant understood an employee could be discharged if the employee accumulated ten attendance points in a rolling calendar year or received three warnings for misusing the employer's time in a rolling calendar year.

On April 4, 2005, the employer gave the claimant a written warning for misuse of the employer's time when the claimant was in the hall without a pass. The employer had recently implemented the use of passes. Although the claimant's supervisor gave the claimant a let out, the supervisor did not give the claimant a pass.

On October 4, 2005, the claimant received his second written warning and a three-day suspension for misusing the employer's time. On October 4, the claimant completed physical therapy and was on his way back to the line when he stopped at the employer's computers to bid on a job that met his work restrictions. The claimant used the computer about two minutes because it would be too late to bid on the job after work and it took him less time to bid on his way back from therapy than it would be for the claimant to go back to the line and get a pass to do this.

On December 8, the claimant had problems getting to work because the roads were slippery and snowy. The claimant arrived at work later than normal. The claimant immediately punched in as he always did. The claimant then went to change his clothes, pick up a set of knives, a frock and gloves. The claimant got to the line between 7 and 13 minutes late. (The employer's clocks were set at different times.) The claimant went right to work.

The claimant understood he was late and thought the employer would assess him a half point for being late. The claimant's job was not in jeopardy if the employer gave him a half a point for attendance problems. The employer, however, considered the December 8 incident as the third time the claimant misused company time because he checked in before he changed his clothes and got to the line. In accordance with the employer's policy, the employer discharged the claimant on December 8, 2005, for having three written warnings for misusing the employer's time.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew and understood in early October he would be discharged if he received another warning for misusing the employer's time. On December 8, the claimant did what he

always did – punched the time clock and then changed his clothes. If the claimant had changed his clothes and punched in late, the employer would not have given him the third written warning for misusing the employer's time. The facts do not establish that the claimant intentionally disregarded the employer's interests on December 8. Instead, the claimant followed his normal routine and expected the employer to assess him a half point for reporting to work late. The claimant was not intentionally late for work. Instead, adverse road conditions resulted in his late arrival at work.

The employer had business reasons for discharging the claimant. The facts do not, however, establish that the claimant committed work-connected misconduct. Therefore, as of December 4, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 6, 2006 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of December 4, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs