

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN G CARR
Claimant

APPEAL NO. 10A-UI-08891-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

**Original Claim: 05/16/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated June 8, 2010, reference 01, which denied benefits based upon his separation from Cargill Meat Solutions Corporation. After due notice was issued, a telephone hearing was held on August 9, 2010. The claimant participated personally. The employer participated by Ms. Jessica Sheppard, human resource associate.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Dustin Carr was employed by Cargill Meat Solutions Corporation from May 12, 2008, until May 14, 2010, when he was discharged from employment. Mr. Carr was a full-time production worker and was paid by the hour.

The claimant was discharged when he exceeded the permissible number of attendance infractions allowed under the company's "no fault" attendance policy. Mr. Carr was aware of the policy and had been warned in the past. The claimant had been given a last chance to retain his employment by an agreement that he entered into with the company on December 22, 2009, when his attendance infractions had reached unacceptable levels. Under the terms of the policy, the claimant was subject to discharge if he violated the last-chance agreement by having any additional attendance points until June 30, 2010.

On May 17, 2010, Mr. Carr unexpectedly did not have transportation to the workplace that morning and called in immediately when he realized that he would have to seek alternative transportation. The claimant did not call earlier because he did not know that he would not have his usual transportation to work that day. Mr. Carr attempted to walk to work that morning; however, his recovery from a previous broken ankle was not complete and the claimant was unable to walk the entire distance to work. He subsequently contacted the employer to report

that he would be absent that day. Although the claimant had had no attendance violations since December of 2009, he was nonetheless discharged, as he had violated the last-chance agreement provisions.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence shows misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

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.

In the case at hand, the evidence establishes that Mr. Carr had made a serious effort to improve his attendance and punctuality since entering into a last-chance agreement with this employer in December of 2009. On May 14, 2010, prior to the expiration of the last-chance agreement, Mr. Carr discovered that he did not have transportation to work that morning and called in as soon as possible to report that he would be tardy in coming to work. Mr. Carr attempted to walk to work that morning, but was unable to complete the distance to the employer's facility because of a previous broken ankle that was not fully healed and pain associated with it. Mr. Carr called in to report that he would not be able to report for work after he had tried to do so.

While the decision to terminate Mr. Carr may have been a sound decision from a management viewpoint, the evidence in the record does not establish sufficient intentional disqualifying misconduct to warrant the denial of unemployment insurance benefits. The claimant had made a concerted effort to improve his attendance and punctuality for an extended period of time and the claimant's inability to report for work in a timely manner on May 14, 2010, was due to factors largely beyond the claimant's control. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated June 8, 2010, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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