

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY STUART

Claimant

APPEAL NO: 10A-UI-07227-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

OC: 04-18-10

Claimant: Respondent (2R)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 7, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 7, 2010. The claimant participated in the hearing. Katie Holcomb, Human Resources Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as full-time plant coordinator for Cargill from September 6, 1993 to April 19, 2010. On March 29, 2010, the claimant asked Scaler Tammy Stabler what the hog count was when he came in and she gave him a number. After going to his office he returned to her area because he thought her count was off. Ms. Stabler, as well as unnamed witnesses, reported the claimant “got in (Ms. Stabler’s) face” and yelled at her using “vulgarity.” He also yelled, “What’s wrong with you?” Ms. Stabler and the witnesses thought her safety was in danger and she took a couple steps away from him and appeared frightened by his behavior. The witnesses reported there were other incidents of the claimant yelling at Ms. Stabler and others in the past but not to this degree. The claimant received a verbal warning about inappropriate behavior toward subordinates in the Fall of 2009 and a verbal warning January 18, 2010, for responding to a subordinate’s error in an unprofessional manner and raising his voice at co-workers. The employer’s policy does not tolerate offensive and/or intimidating behavior that creates a hostile work environment. It believed the claimant behaved in a threatening manner toward Ms. Stabler and acted unprofessionally after recent verbal warnings about the same type of conduct in violation of the workplace violence policy. The employer determined the claimant violated both the workplace violence policy and hostile work environment policy and consequently terminated his employment. There was a delay between the last incident and the termination because the claimant worked in Ottumwa, Iowa, and the claimant’s supervisor

was in Wichita, Kansas, and the Ottumwa office had to pass its investigatory notes to the corporate office in Wichita because the corporate office makes the final determination. The corporate office is the only entity that can make the decision to terminate a supervisory employee and it takes the time to be sure it is making the correct decision. Additionally, the claimant went on vacation April 12, 2010, and was not available for the disciplinary action until April 19, 2010. The claimant admitted confronting Ms. Stabler and said she responded loudly and both used profanity. He stated he told her to calm down and said, "You know I'm a supervisor in the plant and you can't talk to any supervisor in the plant that way." He also told her he was going to talk to her immediate supervisor and walked out of the room, upset. The claimant believes employees at the plant were upset with him and effectively "against" him because he was trying to change the lunch schedule and employees did not like the changes he was proposing and consequently wrote statements supporting Ms. Stabler.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Stabler and three witnesses stated the claimant "got in (Ms. Stabler's) face," causing her to back away from him, because he believed she made an error in the hog count that morning. The claimant's actions were inappropriate and unprofessional and he had been warned about his treatment of subordinates in the fall of 2009 and on January 18, 2010. While both the claimant and Ms. Stabler were loud and used profanity, as a supervisor the claimant had a greater responsibility to act in a professional manner and to treat subordinates, as well as other supervisors, with respect and dignity. The claimant was starting to exhibit a pattern of failing to interact with subordinates professionally and appropriately and it was not unreasonable for the employer to decide it would no longer allow that behavior to continue after it determined he violated the violence in the workplace and hostile work environment policies. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The May 7, 2010, reference 01, decision is reversed. 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. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs

