

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**PATRICK D HAMMEL**  
Claimant

**APPEAL 17A-UI-03625-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEABOARD FOODS SERVICES INC**  
Employer

**OC: 02/26/17**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the March 22, 2017 (reference 04) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged from employment for performing unsatisfactory work, which is not disqualifying misconduct. The parties were properly notified of the hearing. A telephone hearing was commenced on April 28, 2017, and continued to May 9, 2017. The claimant, Patrick D. Hammel, participated. The employer, Seaboard Foods Services, Inc., participated through Erin Hyde, Human Resource Supervisor; Dan Jorgenson, Senior Production Manager; Randy Duncan, Production Manager; Randy Long, GDU Supervisor; and Larry Porter, Claim Specialist with Talx/Equifax. Claimant's Exhibits A through D and Employer's Exhibit 1 were received and admitted into the record.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a multi-site supervisor, from February 6, 2016, until February 28, 2017, when he was discharged for failing to follow instructions. The parties agree that the final incident involved claimant double-stocking pig pens with piglets. Claimant testified that while he was somewhat aware that he was stocking the pens incorrectly, he was trying to keep the piglets warm, as it was wintertime. Claimant explained that this had been his standard practice pre-dating this employer taking over for Christianson Farms, the previous employer. On February 27, 2017, Jorgenson called claimant into the office regarding the double-stocked pens. Claimant told Jorgenson that he would not stock the pens in this way again, and he agreed to fix the issue. Claimant testified that he was not told he needed to restock the pens immediately, and he had work planned out for that day, so he arranged for two coworkers to help him fix the pens the following day. When claimant came into work the following day, he was discharged for improperly stocking the pens. The employer witnesses testified that its standard operating procedures dictate how the pens should be stocked, and claimant had access to these standard operating procedures. Additionally, Duncan provided training on how to properly stock the pens, and the employer contends that claimant attended this training.

Claimant received verbal counseling from Duncan on June 23, 2016, related to some work performance issues. Specifically, claimant “was late on running vaccines, giving directions on vaccinations, tagging and having issues with the GDU staff.” (Exhibit 1, page 8) On February 14, 2017, claimant received a written warning for various work issues. According to the warning, claimant was having both work performance issues, problems adjusting to changes in the work environment and workload, and interpersonal issues. (Exhibit 1, page 9) This document states that failure to improve within 30 days will result in additional disciplinary action. Claimant denies that he knew his job was in jeopardy for improperly stocking the pens and for failing to restock them on February 27.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$4,273.00, since filing a claim with an effective date of February 26, 2017, for the ten weeks ending May 6, 2017. The administrative record also establishes that the employer did participate in the fact-finding interview by submitting written documentation that, without rebuttal, would have resulted in disqualification. The employer did not participate via telephone, as Equifax did not receive the notice of the fact-finding interview in time to arrange for anyone to participate.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning.

Here, claimant was discharged for improperly double-stocking piglets into pens. The employer did not present any evidence that claimant had been warned for any similar failure to follow instructions in the past. Additionally, no one told claimant that he needed to resolve the problem immediately, and claimant intended to fix his error the next working day but he was discharged before he could do so. While Duncan may have provided training about how to properly stock pens, this training was not a disciplinary warning and claimant had no reason to believe that an error in pen stocking would jeopardize his employment. The conduct for which claimant was discharged was merely an isolated incident of poor judgment. The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed, provided claimant is otherwise eligible. As claimant's separation from employment is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

**DECISION:**

The March 22, 2017 (reference 04) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid. The issues of overpayment, repayment, and chargeability are moot.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/rvs