

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL L HUBBARD**  
Claimant

**APPEAL NO. 09A-UI-05376-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AGRIPROCESSORS INC**  
Employer

**Original Claim: 11/09/08  
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Agriprocessors, Inc. filed an appeal from a representative's decision dated March 31, 2009, reference 02, which held that no disqualification would be imposed regarding Michael Hubbard's separation from employment. After due notice was issued, a hearing was held by telephone on May 4, 2009. The employer participated by Anthony Brown, Deli Department Supervisor; Laurie Althouse, Payroll/Human Resources Assistant; and Nicholas King, Security Guard. Exhibits One, Two, and Three were admitted on the employer's behalf. Mr. Hubbard did not respond to the notice of hearing.

**ISSUE:**

At issue in this matter is whether Mr. Hubbard was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Hubbard was employed by Agriprocessors, Inc. from December 11, 2008 until February 19, 2009. He worked full time in production. He was discharged for deliberately destroying company property.

On the morning of February 19, 2009, Mr. Hubbard was presented with two written warnings. One was for attendance and the other was for overstaying his break. When he returned to work following the warnings, it was noted that he was pounding meat that was on racks. His job was to cut the meat in half and place the pieces on the rack. His conduct in pounding on the racks caused the meat to fall onto the floor and become contaminated. When told to stop, he commented that the cost of meat falling on the floor was not coming out of his pocket. As a result of his actions, he was discharged on February 19, 2009.

Mr. Hubbard filed an additional claim for job insurance benefits effective March 1, 2009. He has received a total of \$1,184.00 in benefits since filing the claim.

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

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Hubbard was discharged for destruction of company property. He deliberately engaged in conduct that cost the employer to lose product. There was no work-related reason of him to pound meat while it was on the racks, as his job only involved cutting the meat. His statement that the cost of the lost product would not come out of his pocket is indicative of a total disregard for the employer's interests.

Mr. Hubbard's willful disregard of the employer's standards for handling food product constituted a substantial disregard of the standards the employer had the right to expect. His conduct resulted in a monetary loss to the employer. For the reasons stated herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Mr. Hubbard has received benefits since filing his additional claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

## **DECISION:**

The representative's decision dated March 31, 2009, reference 02, is hereby reversed. Mr. Hubbard was discharged by Agriprocessors, Inc. for misconduct in connection with his employment. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and to determine whether Mr. Hubbard will be required to repay benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw