

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**RONALD F FIGUEROA BORRERO**  
Claimant

**APPEAL 21A-UI-02166-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PACKERS SANITATION SERVICES INC**  
Employer

**OC: 10/18/20**  
**Claimant: Respondent (2R)**

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  
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

**STATEMENT OF THE CASE:**

The employer/appellant, Packer's Sanitation Services Inc., filed an appeal from the December 24, 2020 (reference 01) Iowa Workforce Development ("IWD") unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 2, 2021. The claimant, Ronald F. Figueroa Borrero, registered a phone number but was unavailable when called three times. There was no opportunity to leave a voicemail for claimant. The administrative law judge verified the number registered for the hearing was also the same number listed in administrative records for claimant. The employer participated through Dan Johnson.

The administrative law judge took official notice of the administrative records. Employer Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any 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: The claimant was employed full-time in food safety maintenance and was separated from employment on October 20, 2020, when he was discharged.

When claimant was hired, he was trained on the employer's lock out/tag out policy, which requires that he safety secure equipment anytime he is working on top of, under or inside of a

machine. He was required to manually place his lock on the equipment to notify others that he was working on the equipment. Failure to do so could result in harm or death to claimant or other employees. Claimant was trained in Spanish and signed a receipt of understanding policies, which was presented in both English and Spanish. See Employer Exhibit 1.

Claimant was discharged for a single incident. Claimant had no prior warnings for similar conduct. Claimant was observed on October 20, 2020 working on a conveyor belt without securing his lock. Claimant provided no explanation for his conduct to the employer, and did not participate in the hearing. Given the severity of the incident, employer immediately discharged claimant.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$4,490.17, since filing a claim with an effective date of October 18, 2020.

The administrative record reflects that claimant has received unemployment benefits, Pandemic Unemployment Emergency Compensation (PEUC) benefits, and Federal Pandemic Unemployment Compensation (FPUC) benefits since this separation from employment. Employer did not participate in the fact finding interview because it did not receive a notice of the fact finding interview or a telephone call.

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

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

Iowa unemployment insurance law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

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).

The employer has the burden of proof in establishing disqualifying job related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In this case, the undisputed evidence is claimant was discharged for violating the employer's lock out/tag out procedure. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa App. 1985).

The employer is charged under both federal and state law with providing its employees a safe working environment; furthermore, it is in employer's best financial interest to avoid employee injuries. Even though neither the claimant nor employees were hurt, the employer's lock out/ tag out policy was implemented for the safety of both the claimant and fellow employees. In the absence of following lock out/tag out, an employee could be severely injured. The administrative law judge concludes that the employer's request and directive to follow the lock out/tag out procedure was reasonable.

The claimant in this case did not participate in the hearing to refute the employer's credible evidence. He did not present an explanation for his conduct to the employer at the time of discharge or for the hearing. He has not established a good cause reason for his non-compliance with the employer's lock out/tag out policy. Based on his training, the administrative law judge is persuaded the claimant knew or should have known his conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for misconduct, even without prior warning. Benefits are denied.

**The next issue to address is the overpayment of benefits.**

Iowa Code § 96.3(7)a-b provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to § 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this states pursuant to § 602.10101.

The next issue is whether claimant was overpaid benefits and should have to repay those benefits. In this case, claimant received regular unemployment insurance benefits, PEUC benefits, and FPUC benefits after her separation from employment. While the issues regarding overpayment of regular benefits were on the hearing notice, the issues regarding entitlement to and overpayment of FPUC and PEUC benefits were not. Therefore, the issue regarding overpayment of benefits will be remanded to the Benefits Bureau of Iowa Workforce Development for a calculation.

Claimant should not be required to repay regular unemployment insurance benefits and employer should not be charged for unemployment insurance benefits, as employer did not participate in the fact finding interview through no fault of its own. See Iowa Code § 96.3(7)a-b; Iowa Admin. Code r. 871- 24.10.

#### **DECISION:**

The December 9, 2020, (reference 01) unemployment insurance decision is REVERSED. The claimant was discharged for disqualifying 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 been overpaid unemployment insurance benefits and the issue of the amount of the overpayment will be remanded to the Benefits Bureau of Iowa Workforce Development for calculation. The claimant will not be required to repay regular unemployment insurance benefits and employer will not be charged for any benefits because employer did not participate in the fact finding interview through no fault of its own.

#### **REMAND:**

The issue of claimant's overpayment of regular unemployment insurance benefits, PEUC benefits, and FPUC benefits is remanded to the Benefits Bureau of Iowa Workforce Development for a calculation and decision. Claimant will not be required to repay the overpayment of regular unemployment insurance benefits and employer will not be charged.



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Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

March 09, 2021  
Decision Dated and Mailed

jlb/ol

**NOTE TO CLAIMANT:**

This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** More information about how to apply for PUA is available online at: [www.iowaworkforcedevelopment.gov/pua-information](http://www.iowaworkforcedevelopment.gov/pua-information)

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>