

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALFREDO RODRIGUEZ
Claimant

APPEAL NO. 14A-UI-04857-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERIDIAN MANUFACTURING
Employer

**OC: 04/20/14
Claimant: Respondent (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Meridian Manufacturing (employer) appealed an unemployment insurance decision dated May 9, 2014, (reference 01), which held that Alfredo Rodriguez (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 29, 2014. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Marla Smith, Human Resources Manager; Lane Muckey, Plant Manager; and Thomas Scott, Lead Person.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time painter from October 31, 2011, through April 14, 2014, when he was discharged for walking off the job before the work was done. His shift was from 2:30 p.m. to 11:00 p.m. but all employees have to stay beyond the end of their shifts if they were working on a project that has to be completed. At 7:35 p.m. on April 10, 2014, the claimant was advised by his supervisor that he and all the other employees had to stay late. The employer manufactures large bin structures to store grain or liquid. The bin had to be prepped so it would be ready to paint on the day shift. The claimant said ok, rolled his eyes and walked away.

At 1:00 a.m., the claimant walked off the job and went home. The project was not completed until 2:30 a.m., which is when the rest of the employees left. On April 14, 2014, when the claimant was asked why he left, he rolled his eyes again and said he was tired and was not going to work past ten hours. He was discharged at that time.

The claimant filed a claim for unemployment insurance benefits effective April 20, 2014, and has received benefits after the separation from employment in the amount of \$1,732.00. Human Resources Manager Marla Smith participated in the fact-finding interview on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on April 14, 2014, for walking off the job. He knew that he was required to stay beyond the end of his shift to finish a project but chose to leave anyway. Walking off the job in violation of a directive shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant received benefits in the amount of \$1,732.00 as a result of this claim. A waiver cannot be considered because the employer participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount.

DECISION:

The unemployment insurance decision dated May 9, 2014, (reference 01), is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until 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 is overpaid benefits in the amount of \$1,732.00

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs