

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NATHAN R YEAZLE
Claimant

AGRI STAR MEAT & POULTRY LLC
Employer

APPEAL 20A-UI-05049-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Respondent (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment
Iowa Code § 96.4-3 – Able and Available
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

STATEMENT OF THE CASE:

Agri Star Meat & Poultry (employer) appealed a representative's May 22, 2020, decision (reference 01) that concluded Nathan Yeazle (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 1, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Laura Roney, Payroll/Human Resources Supervisor, and Brice Evans, Maintenance Manager. The administrative law judge took official notice of the administrative file.

ISSUES:

The issues include whether the claimant was separated from employment for any disqualifying reason, whether the claimant was overpaid benefits, which party should be charged for those benefits, whether the claimant is able and available for work, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 2, 2020, as a general maintenance worker-time. He signed for receipt of the employer's handbook when he was hired.

As the pandemic grew, the claimant became concerned about the safety of his work place. His girlfriend was pregnant, there was not enough hand-sanitizer, and the company had frequent influx of visitors from a New York State, a place with a high concentration with Covid-19. The governor of the State of Iowa said employees who felt they were in danger or could endanger the lives of others could stay home from work. The claimant's family encouraged him to speak with the employer about his options for a quarantine leave.

On March 20, 2020, the claimant went to the employer's human resources department and discussed his concerns with the secretary. The claimant knew the secretary was new to the company. She did not send him to a more senior member of the department. The secretary told him to speak to his supervisor, whom she knew was on leave.

The claimant sent a message to his supervisor on March 20, 2020, and left work. The supervisor was on leave and did not see the message until a later date. The payroll/human resources supervisor was unaware of the message. The supervisor did not contact the claimant. The claimant assumed he had been terminated when the supervisor did not return his message. The employer assumed the claimant quit work.

The claimant filed for unemployment insurance benefits with an effective date of April 5, 2020, and received \$3,030.91 in state unemployment insurance benefits and \$7,800.00 in Federal Pandemic Unemployment Compensation after the separation from employment. The employer provided the number of the person who would participate in the fact-finding interview on May 21, 2020. The fact finder called but the employer was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The claimant requested guidance from the human resources department and then from his supervisor. He followed instructions and the employer terminated him for doing so. The claimant was not discharged for misconduct.

For the reasons that follow the administrative law judge concludes the claimant is able and available for work as of April 5, 2020.

Iowa Code section 96.4(3) provides:

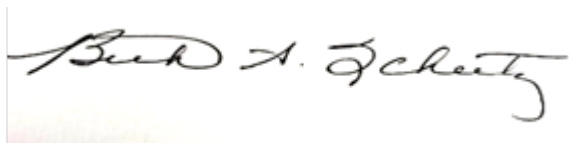
An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). There has been no evidence offered that the claimant is not able and available for work after his separation from employment. Benefits are allowed as of April 5, 2020, provided the claimant is otherwise eligible.

DECISION:

The representative's May 22, 2020, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. The claimant is able and available for work. Benefits are allowed provided the claimant is otherwise eligible.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

Beth A. Scheetz
Administrative Law Judge

July 9, 2020
Decision Dated and Mailed

bas/scn