

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUDON SOSA COMBRAY
Claimant

APPEAL NO. 09A-UI-05960-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 03/15/09
Claimant: Respondent (2-R)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 6, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 13, 2009. Claimant Audon Sosa Combray participated. Jean Spiesz, Human Resources Manager, represented the employer. Exhibits One and Two were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Audon Sosa Combray was employed by West Liberty Foods as a full-time maintenance mechanic from August 2003 until January 27, 2009, when the employer suspended him pending a decision about his continued employment. On February 2, 2009, Jean Spiesz, Human Resources Manager, discharged Mr. Sosa Combray from the employment for violating the employer's lock-out, tag-out policy.

On January 26, Mr. Sosa Combray and another employee were investigating whether a vacuum pump was working properly. Because the men work working with a machine, the employer's established safety policy required that they follow the "lock out, tag out" procedure. The purpose of the "lock out, tag procedure" was to prevent serious injury from occurring. Mr. Sosa Combray was well familiar with the procedure. Mr. Sosa Combray knew that he was not allowed to remove another employee's "lock" from a power supply shut off. Mr. Sosa Combray got frustrated that his coworker was not returning from the restroom as quickly as he thought the coworker should. Mr. Sosa Combray intentionally twisted and pulled the other employee's "lock" to remove it from the power shut off. Shortly thereafter, the other employee returned to the area, observed his "lock" had been removed, and reported the matter to a supervisor. Mr. Sosa Combray admitted the conduct when questioned by Ms. Spiesz.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Mr. Sosa Combray's intentional violation of the employer's safety protocol constituted misconduct in connection with the employment that disqualifies him for unemployment insurance benefits. Mr. Sosa Combray fully understood the safety purpose behind the "lock out, tag out" protocol.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Sosa Combray was discharged for misconduct. Accordingly, Mr. Sosa Combray is disqualified for benefits 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 employer's account shall not be charged for benefits paid to Mr. Sosa Combray.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's April 6, 2009, reference 01, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs