

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE AQUINO
Claimant

APPEAL NO. 10A-UI-11895-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRO INC
Employer

OC: 07-25-10
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 18, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 8, 2010. The claimant provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. He called at 2:48 p.m. for the 8:30 a.m. hearing and stated he thought the hearing was November 9, 2010, and that his wife had disconnected his phone. Interpreter Ike Rocha remained on the phone throughout the hearing in case the claimant called in late. Phil Hingst, Business Process Manager, and Tracey Lennon, Human Resources Administrative Assistant, participated in the hearing on behalf of the employer. Employer's Exhibits One through Eight were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time product inspector/finisher for Centro from August 9, 1995 to July 27, 2010.

One of the employer's jobs is to build fuel tanks for John Deere, and it must make sure the tanks will not leak because of the potential safety issues surrounding the tanks. The claimant was observed twice within a short period of time failing to pressure test fuel tanks properly July 23, 2010. The first incident occurred when the claimant "did not utilize the second inspector for the last time segment of the test which resulted in the need to depress the FAIL button to raise the tank from the dunk tank" (Employer's Exhibit Six). The claimant "removed the fuel tank, engraved the tank as though it passed the test, completed secondary processing to the tank, and then placed the tank in the final packaging unit as a 'good' part" (Employer's Exhibit Six). The employer interviewed the claimant about the situation after two leaders

observed him fail to pressure test the fuel tanks properly (Employer's Exhibit Six). The claimant indicated he did not require the second inspector to come over for the second part of the pressure test and stated his personal opinion was that "the tank was good as it did not leak during the time that he did test the part" (Employer's Exhibit Six). The claimant stated he did not agree with the employer's testing procedure of the fuel tanks because 'it takes too long and just slows them down and puts them behind' (Employer's Exhibit Six). The employer asked the claimant if he remembered all of the conversations had during weekly team meetings about following the Pressure Testing Process "explicitly" (Employer's Exhibit Six). The claimant stated he remembered but did not agree with the process (Employer's Exhibit Six). The employer again explained why they pressure test the product the way they do and that there was "no latitude" in following the testing process (Employer's Exhibit Six).

Later that day, the claimant was observed "manipulating the Operator Present Switch on the pressure testing controls in a manner that 'tricked' the testing controls to think that a person was present to complete the required inspection during the first time segment of the testing process on the fuel tank" in question (Employer's Exhibit Six). When the employer spoke to the claimant about the incident, he "admitted to jamming the Operator Preset Switch on the machine during the testing of the fuel tank so that he could go do other things while the fuel tank filled with air" (Employer's Exhibit Six). The employer again asked him if he recalled all of the previous conversations about the Pressure Testing Procedures and the claimant admitted that he did but again stated he did agree with the process (Employer's Exhibit Six). The employer told him again there was "no latitude" in the testing procedure and the claimant said several others do not follow the procedure either but declined to name any others (Employer's Exhibit Six). The employer asked if the claimant was aware the employer took action against anyone it learned did not follow the process correctly and the claimant stated he was and knew other employees were terminated for the same violation (Employer's Exhibit Six). The claimant was sent home and told to report to work July 26 (Employer's Exhibit Six).

After the employer discussed the matter internally, it made the decision to terminate the claimant's employment effective July 27, 2010. The claimant received a written warning for failing to following testing procedures January 12, 2010 (Employer's Exhibit Seven).

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

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

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer builds fuel tanks for John Deere. Due to the serious safety issues involving fuel tanks, the employer has instituted strict testing procedures to make sure the tanks do not leak. There is at least a two-step process, involving more than one employee, to determine if the tanks leak. The claimant did not agree with the policy, felt it was unnecessary and slowed the process down, and as a result he willfully and knowingly failed to follow the testing procedures on at least two occasions July 23, 2010. When confronted by the employer about the situation, the claimant admitted skipping steps of the testing process because he did not feel it was necessary. The employer talked about the testing procedures during its weekly team meetings and the claimant stated to the employer he understood the process but did not agree with it. Additionally, he was warned about not following the procedures January 12, 2010. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The August 18, 2010, reference 01, decision is reversed. The claimant was discharged from employment due to 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 received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw