

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MOISES ESCOBAR LEMUS**  
Claimant

**SMITHFIELD FARMLAND CORP**  
Employer

**APPEAL 18A-UI-09163-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/05/18**  
**Claimant: Respondent (1)**

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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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the August 23, 2018, (reference 02) unemployment insurance decision that allowed benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on September 21, 2018. Claimant participated. Employer participated through human resources manager Becky Jacobsen, operations manager Brian Boland, and superintendent Shane Whitenack. Employer's Exhibit 1 was received.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can 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: Claimant began working for employer on October 24, 2001. Claimant last worked as a full-time production worker. Claimant was separated from employment when he was suspended without pay on July 17, 2018. He was later terminated.

The United States Department of Agriculture (USDA) regulations require businesses like employer to perform an inspection of its equipment prior to operating each day. The USDA requires employer to document the inspection. If the USDA finds employer falsified the inspection report, it could recall all of the product produced on the date in question or shut down production for the day. The USDA has an inspector on-site at all times during production. Claimant was aware of this information.

Claimant has been assigned to perform pre-operative inspections during the last 12 years. Throughout this entire time period, claimant has always performed the entire inspection before

completing the inspection report. The inspection report calls for a start and end time. Claimant has always estimated when marking the start time.

On Saturday, July 14, 2018, claimant was observed by a supervisor arriving at work five minutes late at 4:53 a.m. Claimant indicated on the inspection report that he began the inspection at 4:47 a.m., one minute prior to his scheduled arrival time.

On Monday, July 16, 2018, employer reviewed the inspection report and noticed the discrepancy between claimant's arrival time and the start time for the inspection report.

On July 17, 2018, employer suspended claimant without pay while it investigated. Employer found that on June 5, 2018, claimant arrived at work at 4:53 a.m., but indicated on the inspection report that he began the inspection at 4:50 a.m. On July 12, 2018, claimant arrived at work at 4:47 a.m., and indicated on the inspection report that he began the inspection at 4:48 a.m.

Employer interviewed claimant and he admitted to the conduct. Claimant's job was not in jeopardy due to attendance or tardiness. Claimant stated that the conduct was due to carelessness and that he would be more careful in the future.

Employer terminated claimant's employment on July 31, 2018.

Claimant had never been previously disciplined for similar conduct.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa Code § 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 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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant marked the start time for an inspection on an inspection report inaccurately on three occasions. Claimant was aware that if the USDA questioned the veracity of the inspection report, it could shut down production for the day or recall product. The issue, however, is not the importance of the policy claimant violated. The issue is whether employer has proved by a preponderance of the evidence that the claimant committed misconduct.

The inaccuracies were minor, by only a few minutes in each case. Claimant did not mark a false time in attempt to avoid an attendance infraction. Instead, claimant estimated the start time, as he had done when completing the paperwork post-inspection without issue for the past 12 years.

"[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 666 (Iowa 2000). A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." 871 IAC 24.32(1)(a). When looking at an alleged pattern of negligence, previous incidents are considered when deciding whether a "degree of recurrence" indicates culpability.

Claimant was careless, but the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called

misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, 879 N.W.2d 222 (Iowa Ct. App. 2016). Ordinary negligence is all that is proven here.

Claimant's separation from employment is not disqualifying. Therefore, the issues regarding overpayment are moot and will not be discussed further in this decision.

**DECISION:**

The August 23, 2018, (reference 02) unemployment insurance decision is affirmed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Christine A. Louis  
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Decision Dated and Mailed

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