

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SANDRA L SUMMERS**  
Claimant

**APPEAL NO. 07O-UI-02343-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS  
CORPORATION**  
Employer

**OC: 12/10/06 R: 03  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated January 2, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. The Employment Appeal Board (EAB) remanded the case for another hearing because the claimant had requested a 4:00 p.m. hearing to accommodate her work schedule, but no action had been taken her request, and the EAB decided the claimant had good cause for failing to participate. After the remand, a telephone hearing was scheduled for March 26, 2007, but the hearing was rescheduled for April 4, 2007, at 4:00 p.m. after the employer's representative requested a postponement because she was out of town at the time of the hearing. Proper notice of the rescheduled hearing was given to the parties. The claimant called and provided a telephone number, but she was not available to take the call at the time of the hearing and did not call in during the hearing or afterward. Katie Diercks participated in the hearing on behalf of the employer.

**ISSUES:**

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a hog driver in the livestock department from May 2, 2000, to December 7, 2006. The claimant understood, based on the animal handling training that she received, that she could be discharged for improper handling of animals.

On December 7, 2006, the claimant used a metal gate to prod a hog that was down to get it to move, which violated the standards set in the training she received because it could injure the animal or cause it to panic. The employer had other acceptable methods that were to be used in getting a downed animal to move.

The employer discharged the claimant on December 12, 2006, for committing animal abuse on December 7, 2006.

The claimant filed for and received a total of \$1,002.00 in unemployment insurance benefits after filing for unemployment insurance benefits.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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 claimant's violation of the standards for handling animals on which she received training was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$1,002.00 in benefits.

**DECISION:**

The unemployment insurance decision January 2, 2007, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$1,002.00 in unemployment insurance benefits, which must be repaid.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw