

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**MICHAEL ASHLOCK**  
Claimant

**APPEAL NO. 14A-UI-03762-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STELLAR MANAGEMENT GROUP V INC**  
**QSI**  
Employer

**OC: 03/16/14**  
**Claimant: Respondent (2)**

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Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Quality Service and Integrity (employer) appealed an unemployment insurance decision dated April 4, 2014, (reference 01), which held that Michael Ashlock (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 29, 2014. The claimant participated in the hearing. The employer participated through Brittney Johnson, Human Resources Manager.

**ISSUES:**

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

**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 employed as a full-time supervisor from January 4, 2012, through March 17, 2014, when he was discharged for violating a zero tolerance policy. The employer is a sanitation company who provides employees to clean equipment in industrial plants. The claimant was assigned to work at Cargill Meat Solutions, which is a meat processing facility and Cargill's work rules prohibit pictures taken inside the plant, as well as restricting cell phones on the work floor. The claimant worked third shift and on March 11, 2014, at approximately 2:30 a.m., he took a picture of himself on the production floor and posted it on a social media website called Instagram. Cargill became aware of it and the claimant was suspended before reporting to work on the evening of March 11, 2014. The employer said Cargill has this policy posted on walls and the claimant should have also received the information when he was assigned to work there. He was discharged on the following Monday.

The claimant filed a claim for unemployment insurance benefits effective March 16, 2014, and has received benefits after the separation from employment in the amount of \$2,195.00. The employer did not participate in the fact-finding interview.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on March 17, 2014, for violating two zero tolerance policies. He had his cell phone on the production floor, took a picture of himself, and posted it on a social media website. The claimant admitted he was responsible for enforcing the policies but denies he was aware of these policies. However, he admitted that even if he was not aware of the policies, common sense dictates a meat processing facility would prohibit pictures from being taken on the production floor. The fact that he was a supervisor makes his actions all the more serious. The claimant's conduct demonstrates a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

In the case herein, the claimant received \$2,195.00 in unemployment benefits. The benefits were not received due to fraud or willful misrepresentation and the employer witness did not participate in the fact-finding interview. Consequently, the overpayment is waived and the employer's account continues to be subject to charge.

**DECISION:**

The unemployment insurance decision dated April 4, 2014, (reference 01), is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld 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 overpayment amount of \$2,195.00 is waived and the employer's account is liable.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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