

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANCISCO J SALAS MARTINEZ
Claimant

APPEAL NO. 11O-UI-06606-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GLOBAL FOODS PROCESSING INC
Employer

OC: 11/07/10
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Global Foods Processing, Inc. filed a timely appeal from a representative's decision dated December 8, 2010, reference 01, which held the claimant eligible to receive unemployment insurance benefits. A telephone hearing was held on January 27, 2011, and an administrative law judge decision was issued on February 17, 2011, reversing the fact-finder's decision and finding the claimant was discharged under disqualifying conditions. An appeal was filed with the Employment Appeal Board. On May 11, 2011, the Employment Appeal Board remanded the matter for a new hearing, as the digital voice recording of the initial hearing was not available. A telephone hearing was conducted on July 11, 2011, after due notice. The claimant participated personally. Participating on behalf of the employer was Ms. Sarah K. Kleber, attorney at law, and witnesses David Guest, company president; Jamie Herrera; Florday Maria Yak; and Ramon Vasquez. Employer's Exhibits One through Five were received into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Francisco Salas Martinez was employed by Global Foods Processing, most recently from August 25, 2010, until November 17, 2010, when he was discharged from employment. Mr. Salas Martinez held the position of full-time production worker and was paid by the hour. His immediate supervisor was Jamie Herrera.

The claimant was discharged based upon an incident that had taken place at the end of the workweek. Mr. Salas Martinez attempted to exchange "green" work gloves for new ones at the company's equipment booth. When Mr. Yak explained that the green gloves were issued only at the beginning of the workweek, Mr. Salas Martinez became angry and attempted to take a pair of gloves without authorization. The claimant's attempt was blocked by Ms. Yak. Mr. Salas Martinez became further angry and struck Ms. Yak on the side of the face with the gloves and/or his hand. The matter

was immediately reported to company management and management verified that Ms. Yak showed the physical signs of being struck.

The claimant was suspended pending investigation and was not officially discharged until a later date because the claimant could not be located.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

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.

In this matter, the evidence shows the claimant was discharged for engaging in unprovoked and unreasonable violence in the workplace. When the claimant had been informed that he could not receive a new pair of gloves until the beginning of the next workweek, the claimant became angry and struck the supply room worker, who had been following company rules by refusing to issue new gloves.

The claimant's conduct clearly showed a willful disregard of the employer's interests and standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law and therefore his discharge was disqualifying. The delay in the discharge was reasonable, as the claimant could not be located for a substantial period of time. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated December 8, 2010, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw