

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DERRICK J MCNEECE
Claimant

STAR ENERGY SERVICES LLC
Employer

APPEAL 21A-UI-01258-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/06/20
Claimant: Respondent (2)

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:

On December 16, 2020, the employer filed an appeal from the December 9, 2020, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 17, 2021. Claimant did not register for the hearing and did not participate. Employer participated. Employer's Exhibits 1 through 6 were admitted into the record.

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 May 7, 2020. Claimant last worked as a full-time, seasonal crew member. Claimant was separated from employment on September 8, 2020, when he was terminated.

Employer is hired by electric cooperatives to inspect utility poles. Claimant was trained on the importance of inspecting each pole properly due to the severe safety issues it could cause if a pole is unsafe.

In July 2020, claimant and two crew members were assigned to a project in Iowa. On July 22, 2020, supervisor Karl Nietfeld performed some quality control checks on the work. Nietfeld discovered that the employees completed documentation indicating they had inspected poles, but the ground around the poles was undisturbed and the poles had no signs of boring. This was a red flag to Nietfeld that the inspection had not actually been done. Nietfeld confronted the three employees and they admitted to skipping about 50 to 100 poles. Nietfeld assigned the

employees to a different job site with more supervision and informed them they were on probation pending further investigation.

In the meantime, Nietfeld continued to investigate the three employees' work. After reviewing time stamps of the inspection documentation and further interviews, Nietfeld learned the number of poles that would need to be re-inspected was closer to 1,000. Upon learning this, employer terminated claimant's employment, as well as the other two employees.

By December 2020, employer learned the amount of work that would need to be redone was closer to inspection of 2,600 poles. Employer will not be able to collect additional funds from its customer for its "re-work" or undo the damage to its reputation.

Claimant has not received any unemployment insurance benefits since filing this claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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). Misconduct justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 is not 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 acted with deliberate disregard of employer's interests when he falsified documents stating he had inspected utility poles, when he had not done so. Employer established claimant was terminated for misconduct.

Claimant is disqualified from receiving unemployment insurance benefits. Because claimant has not received any unemployment insurance benefit payments, he has not been overpaid benefits.

DECISION:

The December 9, 2020, (reference 01) unemployment insurance 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.



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February 26, 2021
Decision Dated and Mailed

cal/scn