IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

EDGAR MAY
Claimant

ARMOUR ECKRICH MEATS LLC
Employer

APPEAL NO: 14A-UI-09335-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/10/14
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 3, 2014, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 16, 2014 and continued November 12, 2014. The claimant participated in the hearing with current maintenance mechanics Taylor Severin and Vitalie Cernetchi and was represented by Attorney Tom Duff. Jacque Huesman, Human Resources Manager; Travis Papenberg, Maintenance Manager and Scott Bergan, Quality Assurance Manager; participated in the hearing on behalf of the employer and were represented by Attorney Austin Brayley. Employer's Exhibits A through F were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time maintenance mechanic for Armour Eckrich Meats from August 1968 to August 12, 2014. He was hired by the current owner December 19, 1983. He was discharged for insubordination.

The employer is a food processing plant. The maintenance staff can go anywhere within the plant as long as they follow the food safety policy. That policy, addressing the expectations of mechanics, signed by the claimant May 13, 2014, states, "This is a team and all maintenance employees need to understand this entire plant is their responsibility. Your responsibility doesn't stop at your equipment. In saying this it's expected that if a fellow team mate has a lot going on in their area that you assist as needed. Make sure to follow all procedures as doing so for QA reasons (Raw-Ready to Eat-Pack) (Employer's Exhibit D). The claimant also received a copy of the work rules regarding the disciplinary guidelines, with the changes to the policy outlined in red, March 22, 2014 (Employer's Exhibit B).

If a maintenance employee is directed to go from the raw food area to the ready-to-eat (RTE) area or vice-versa, he must go through the sanitation process to prevent food contamination. That process consists of washing hands, walking through a footbath, putting on a clean frock, wiping the hard hat off with hand sanitizer, putting on gloves, apron and sleeves and in some instances cleaning tools being brought from one area to another.

On August 11, 2014, Maintenance Manager Travis Papenberg received multiple calls for maintenance in the knock and fry area of the plant. All other maintenance mechanics were busy so he called the claimant and instructed him to go the knock and fry area. The claimant stated, "The fryer is in the RTE area and I'm not a RTE mechanic. I'm a raw meats mechanic and you have rules about cross contamination." Mr. Papenberg responded by saying, "The entire plant is your area." The claimant then stated RTE was, "Not my area" and Mr. Papenberg said he would get back to him shortly.

Mr. Papenberg reported the incident to human resources and soon afterward there was a meeting held involving Mr. Papenberg; Human Resources Manager Jackie Huesman; the claimant's union representative; and the claimant. The employer asked the claimant why he felt the RTE area was not his area and the claimant stated it was because he worked in the raw area. The employer responded that he could go to any area if he followed the food safety policies as he had done in the past. The claimant said he could not go to the RTE area because it was a food safety issue, which was not correct. After reviewing the situation and considering that the claimant was on a last-chance agreement, the employer terminated the claimant's employment for insubordination.

The claimant received a written warning September 6, 2013, after it was determined he "provoked an incident among his co-workers that created an environment of volatility and resulted in his co-workers feeling that they had to defend themselves for something trivial which resulted in anger and frustration that could have erupted in an incident much more serious that what occurred" (Employer's Exhibit C).

On June 27, 2014, the claimant received a ten-day suspension after he used "abusive, obscene and threatening" language toward Mr. Papenberg when questioned about an incident involving the in-house USDA inspector (Employer's Exhibit E). As a result of that incident the employer issued the claimant a "Last Chance Agreement" June 26, 2014 (Employer's Exhibit E). The agreement stated any work rule violations in the next 24 months would result in termination of the claimant's employment (Employer's Exhibit E).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code § 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.

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 of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts of omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The administrative law judge recognizes the claimant and Mr. Papenberg had a personality conflict and Mr. Papenberg may have wanted the claimant terminated because of that conflict. The claimant, however, played into his hands by having an unnecessary argument with co-workers in June 2013 and engaging in a heated argument with Mr. Papenberg in June 2014. Those events resulted in the claimant receiving a written warning in June 2013 followed by being placed on a Last Chance Agreement in June 2014.

Mr. Papenberg asked the claimant to go from the raw food area to the RTE area August 11, 2014, and the claimant responded by stating he was a raw food mechanic and the knock and fry machine was in the RTE area. The claimant testified he was frustrated because he did not find Mr. Papenberg's request "feasible" or "logical." That was not for the claimant to decide, however, and while he may not have specifically stated he would not go to the RTE area, the claimant effectively refused to follow Mr. Papenberg's directions to cross from the raw food area to the RTE area. His actions were insubordinate and occurred while he was on a Last Chance Agreement. That removed this situation from an isolated incident of misconduct and he was discharged for violating the Last Chance Agreement.

Although the administrative law judge finds it unfortunate these events occurred at the end of the claimant's long career with the employer, under these circumstances the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to

expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

Iowa Admin. Code r. 871-24.10 provides:

> Employer and employer representative participation in fact-finding interviews.
>
> (1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.
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> (2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.
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> (3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.
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> (4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment

> insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.
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> This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and employer failed to participate in the finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. In this case, the claimant has received benefits but was not eligible for those benefits. There is no evidence the claimant received benefits due to fraud or willful misrepresentation and the employer failed to participate in the fact-finding interview September 2, 2014, when called by the fact-finder at 2:15 p.m. and 3:50 p.m. Consequently, the claimant's overpayment of benefits, in the amount of $5,408.00 to date, must be waived and the overpayment charged to the employer's account.

DECISION:

The September 3, 2014, reference 02, 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. The claimant has received benefits but was not eligible for those benefits. The employer did not participate in the fact-finding interview. Consequently, the recovery of the claimant's benefit overpayment in the amount of $5,408.00 is waived as to the claimant and will be charged to the employer's account.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/pjs