

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JANICE LAMB**  
Claimant

**OSCEOLA FOOD LLC**  
Employer

**APPEAL 17A-UI-06364-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/21/17  
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:**

The employer filed an appeal from the June 12, 2017 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged and the employer did not establish willful or deliberate misconduct. The parties were properly notified of the hearing. A telephone hearing was held on July 6, 2017. The claimant, Janice Lamb, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, Osceola Food, L.L.C., participated through Roberto D. Luna, HR Manager; and Alice Rose Thatch of Employers Unity represented the employer. The administrative law judge took official notice of the administrative record and the fact-finding documentation.

**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 was employed full time, most recently as a production worker, from July 24, 2006, until May 23, 2017, when she was discharged for insubordination. At the time that claimant's employment ended, she had a five-pound lifting restriction stemming from a work-related injury. Because of this restriction, claimant was unable to perform her standard job duties on the production line. On May 18, 2017, claimant's supervisor notified her that he needed to go to label verification training with the quality control engineers so she could perform this job. Luna explained that label verification requires no lifting and fell within claimant's restrictions. Claimant stated that she did not want to go to the training because she did not want to perform the label verification job. The employer's management personnel explained to claimant that she needed to obtain the training so that she could move to the label verification position and continue working. Claimant told management that she would not do the training and the employer would have to

fire her. She was suspended that day. The following day, Luna spoke with claimant about this issue. Claimant again refused to attend label verification training, as she believed it would be stressful. She also told Luna that she had never done label verification before and she did not intend to do that task. Luna informed claimant that she could be discharged for refusing to attend the label verification training. After this conversation, Luna learned from multiple supervisors that claimant had previously done label verification and was capable of doing the job. Claimant was ultimately discharged for refusing to attend the label verification training and transition to that role.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$0.00, since filing a claim with an effective date of May 21, 2017. The administrative record shows that claimant has not filed any continued weekly claims for benefits since her separation. The administrative record also establishes that the employer did participate in the fact-finding interview.

### **REASONING AND CONCLUSIONS OF LAW:**

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

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). 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 does not constitute 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).

The employer presented credible testimony that claimant refused to attend a necessary training. She was informed that she would lose her job if she refused the training. There is no indication that the training would have put claimant in a dangerous or intolerable work environment, and Luna testified that claimant had previously performed the tasks covered by the training and was capable of doing that job. Claimant's refusal to go through the label verification training and transition to that job amounts to insubordination, which is disqualifying misconduct. Benefits are withheld. As claimant has not received any benefits since her separation, the issues of overpayment, repayment, and chargeability are moot.

**DECISION:**

The June 12, 2017 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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