

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLAS BALTAZAR
Claimant

APPEAL NO. 08A-UI-10498-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CON AGRA – COUNCIL BLUFFS
Employer

OC: 10/05/08 R: 01
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Con Agra filed an appeal from a representative's decision dated October 28, 2008, reference 01, which held that no disqualification would be imposed regarding Nicolas Baltazar's separation from employment. After due notice was issued, a hearing was held by telephone on November 24, 2008. The employer participated by Rebecca Stokes-Booth, Senior Human Resources Generalist, and Phil McMillan, Quality Manager. Mr. Baltazar did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Baltazar was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Baltazar was employed by Con Agra from July 21, 1997 until October 2, 2008. He was last employed full time as a lead person in sanitation. He was discharged for violating the employer's lock-out/tag-out procedures. Each employee who has received training on locking out power is given his or her own lock. Employees are not permitted to remove a lock belonging to another employee. If access to a locked out machine is needed and the person to whom the lock belongs is not available, a supervisor is to be contacted. The supervisor is required to perform an inspection to make sure it is safe to restore power and has to complete paperwork outlining the steps taken.

On October 1, 2008, Mr. Baltazar used a pair of channel lock pliers to remove a lock that did not belong to him. He made no attempt to locate a supervisor before removing the lock. He could have contacted any supervisor in the plant by using his two-way radio. When questioned, his only reason for removing someone else's lock was that he wanted to get the line up and running. The employer conducts annual training on the correct lock out/tag out procedures. Mr. Baltazar underwent such training on September 15, 2008. The violation of the safety policy was the sole reason for the October 2, 2008 discharge.

Mr. Baltazar filed a claim for job insurance benefits effective October 5, 2008. He has received a total of \$722.00 in benefits since filing his claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Baltazar was discharged for violating a known safety rule. He had just received training on the correct lock-out/tag-out procedures on September 15, 2008. In spite of knowing the correct procedures, he violated the policy on October 1, 2008.

Mr. Baltazar's conduct had the potential of causing serious bodily harm if someone did not know he had restored power to the machinery. Given the fact that he had recently received training on the correct procedure, the administrative law judge must assume he deliberately disregarded the policy on October 1. Based on the seriousness of the deliberate violation, the administrative law judge concludes that substantial misconduct has been established. Accordingly, benefits are denied.

Mr. Baltazar has received benefits since filing his claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If an overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. Benefits will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Mr. Baltazar will be required to repay benefits already received.

DECISION:

The representative's decision dated October 28, 2008, reference 01, is hereby reversed. Mr. Baltazar was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Baltazar will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw