

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL D CLAY
Claimant

KRAFT HEINZ FOODS COMPANY
Employer

APPEAL 16A-UI-12572-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/23/16
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 November 17, 2016, (reference 01) unemployment insurance decision that allowed benefits based upon a determination that the employer did not meet its burden of proving claimant was discharged for disqualifying misconduct. The parties were properly notified of the hearing. A telephone hearing was held on December 19, 2016. The claimant, Michael D. Clay, participated, and witness Lenard Overstreet also testified on claimant's behalf. The employer, Kraft Heinz Foods Company, participated through Amy Matlick, HR generalist. Employer's Exhibits 1 through 13 were received and admitted into the record without objection. During the hearing, the administrative law judge took official notice of the fact-finding documentation in order to determine whether the employer participated in the fact-finding interview.

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 team member, from February 1, 2016, until October 25, 2016, when he was discharged for a safety violation. According to the employer, claimant went into the chemical cage on October 16 and retrieved an acid that he was not supposed to be using. This acid was not compatible with other chemicals being used for cleaning at that time, and the interaction between the acid and the other chemicals could have resulted in noxious gases capable of killing employees. Claimant denies that he personally got out the acid. He maintains that a coworker instructed him that Doug, a line tech, had told her to use the acid. Claimant testified that he took the acid over to Doug to confirm that instruction, and Doug denied that was correct. Claimant then returned the acid to where he

found it. Claimant had no safety violations in the past. The parties provided conflicting testimony on the nature and amount of training he received.

Witness Lenard Overstreet testified that ordinarily, the employer has all of the chemicals the employees will need listed on a big board. On October 16, however, there were no chemicals listed on the board. Additionally, there were no chemicals left out for the employees, which was the standard practice. Overstreet did not see whether claimant or another employee retrieved the acid from the chemical cage.

The employer provided witness statements regarding this incident. Witness Natasha Brandon denies being in the room when the incident involving the acid occurred, and witness Stephanie (last name illegible) does not state she saw claimant retrieve the acid. One witness (whose signature is illegible) states he or she saw claimant grabbing the acid. The fourth witness statement is unsigned.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2471.00, since filing a claim with an effective date of October 23, 2016. Claimant received gross weekly benefits of \$353.00 each week for eight weeks, most recently for the week ending December 17, 2016. The administrative record also establishes that the employer did not 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 no disqualifying reason. Benefits are allowed.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant's testimony more credible than the employer's testimony. Claimant provided a firsthand account of what happened on October 16 related to the acid and the cleaning process, whereas the employer only provided an employee from human resources with no firsthand knowledge of the incident leading to separation. Additionally, the witness statements provided by the employer are of little evidentiary value, as several of the statements' authors cannot be identified and none of the witnesses participated in the hearing.

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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Claimant provided credible testimony that he neither got out the acid nor was using the acid to clean the work environment. The employer provided no firsthand testimony to refute claimant's statements. The employer has not met its burden to establish that claimant was discharged for disqualifying misconduct. Benefits are allowed. As the separation qualifies claimant to receive unemployment insurance benefits, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The November 17, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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