

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MICHAEL A MEADOWS  
908 – 1<sup>ST</sup> ST NW  
HAMPTON IA 50441-1205

BERRY IOWA CORP  
c/o THOMAS & THORNGREN  
PO BOX 280100  
NASHVILLE TN 37228

Appeal Number: 06A-UI-01589-JTT  
OC: 01/08/06 R: 01  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5 - Discharged for Misconduct  
Section 96.3(7) - Recovery of Overpayment

STATEMENT OF THE CASE:

Berry Iowa Corporation filed a timely appeal from the January 30, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 27, 2006, Claimant Michael Meadows participated. Human resources Supervisor Judy Hammarmeister represented the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michael Meadows was employed by the Berry Iowa Corporation as a Shipping Group Leader from December 26, 2001, until January 10, 2006, when Plant Manager Janna Gorder and Human Resources Supervisor Judy Hammarmeister discharged him.

The final incident that prompted the discharge came to the employer's attention on January 6, 2005, when Plant Manager Janna Gorder found a sales receipt for \$114.00 in employer's parking lot. The sales receipt was for the sale of wood pallets. The employer learned that Mr. Meadows had been selling wood pallets left over from deliveries, receiving money for the pallets, and not reporting the sales or the proceeds to the employer. A year earlier, Plant Manager Janna Gorder had instructed Mr. Meadows to "get rid" of the wood pallets. Initially, Mr. Meadows had given the pallets to individuals who had wood stoves and the need for wood. Mr. Meadows then began selling the pallets to three or four pallet vendors. Mr. Meadows sold the pallets for cash. Mr. Meadows ran three warehouses and sold pallets from all three. Mr. Meadows did not seek authorization from Ms. Gorder to sell the pallets, did not make Ms. Gorder aware of the agreements he had entered into with the vendors, and did not make Ms. Gorder aware of the significant proceeds received from the sales, which proceeds totaled approximately \$3,900.00 over the course of the year.

On January 9, 2006, Human Resources Supervisor Judy Hammarmeister met with Mr. Meadows to discuss the matter. Mr. Meadows advised Ms. Hammarmeister that he had sold pallets to multiple vendors for cash. Mr. Meadows told the employer that he had used the cash to purchase lunches every day for four or five people, including himself and those under his supervision. Mr. Meadows told the employer that he had used the funds to purchase two refrigerators and one microwave. The most expensive refrigerator had cost \$75.00. Mr. Meadows purchased the other refrigerator from his neighbor. The microwave and one of the refrigerators were kept in Mr. Meadows' office. Mr. Meadows told the employer that he kept the proceeds for the sales in a drawer in his office. There were no proceeds from the sales left over at the time Ms. Hammarmeister met with Mr. Meadows.

Mr. Meadows established a claim for benefits that was effective January 8, 2006, and has received benefits.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Meadows was discharged for misconduct in connection with the employment. It does.

Iowa Code section 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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

This case comes down to Mr. Meadows' credibility. Mr. Meadows' statement during the fact-finding interview deviates significantly from Mr. Meadows' testimony at the hearing. At fact-finding, Mr. Meadows stated that he had been selling the pallets for *two* years, but Mr. Meadows testified at the hearing that he had only than selling the pallets for one year. At fact-finding, Mr. Meadows stated that he had used the proceeds to buy a refrigerator, a microwave, and "a few lunches." However, Mr. Meadows testified at the hearing that the refrigerators were purchased for small sums and that the bulk of the money was used to purchase lunches *every day* for four or five individuals. These significant discrepancies in Mr. Meadows' explanation of his conduct cast serious doubt on Mr. Meadows' credibility. The administrative law judge concludes that Mr. Meadows has not been forthright in describing what happened to the funds generated from the sale of the pallets.

The preponderance of the evidence in the record establishes that Mr. Meadows knowingly misappropriated property that belonged to the employer and pocketed the bulk of the proceeds. A number of factors point to Mr. Meadows' culpability or desire to prevent the employer from learning about the activity. First, despite the fact that the sale of the wood pallets resulted in significant and regular proceeds, Mr. Meadows never once brought the arrangement to the attention of his superiors. Second, the transactions were cash-based, and therefore not easily tracked. Third, Mr. Meadows had not entered into a mere casual arrangement, but was operating a veritable business and had entered into business arrangements with three or four business entities. Fourth, Mr. Meadows has provided inconsistent and wholly unsatisfactory accountings of the proceeds.

Based on the preponderance of the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Meadows was discharged for misconduct. Accordingly, Mr. Meadows is disqualified for benefits until 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 employer's account shall not be charged for benefits paid to Mr. Meadows.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The benefits Mr. Meadows has received constituted in the overpayment that Mr. Meadows must repay. Mr. Meadows is overpaid \$1,904.00.

DECISION:

The Agency representative's decision dated January 30, 2006, reference 01, is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged. The claimant is overpaid \$1,904.00.

jt/kjw