

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATHY A FEILMEIER
Claimant

AMVC EMPLOYEE SERVICES LLC
Employer

APPEAL 17A-UI-02423-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/05/17
Claimant: Respondent (1)

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 February 28, 2017, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on March 28, 2017. Claimant participated. Employer participated through human resource director Michelle Shook. Employer's Exhibits 1 through 4 were received.

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 began working for employer on June 17, 2013. Claimant last worked as a full-time swine specialist. Claimant was separated from employment on February 3, 2017, when she was terminated.

Claimant worked at a swine farm. Toward the end of her employment, claimant worked with employees named Jim and Niblet. They were supervised by unit manager Shane Wiskus.

Employer has a policy addressing animal welfare. The policy states that if any willful act of neglect is observed, the witness should immediately report the incident to the farm manager, production manager, or a company veterinarian within 48 hours of the incident. The policy states that any individual who witnesses an act of animal neglect and fails to report the incident as required will be immediately terminated. Claimant was aware of the policy.

Employer typically euthanizes animals within 24 hours of recognizing the need to do so.

On January 3, 2017, a company veterinarian visited the farm at which claimant worked. The veterinarian identified an animal that needed to be euthanized within 24 to 48 hours. The veterinarian informed claimant, Jim, Niblet, and unit manager Shane Wiskus that the animal needed to be euthanized.

Sometime after the veterinarian left, Wiskus instructed the employees not to euthanize the animal. Wiskus stated the animal could be treated. No employee reported Wiskus's conduct to the production manager or the company veterinarian within 48 hours of it occurring.

On January 31, 2017, Wiskus identified a second animal that needed to be euthanized. Instead of euthanizing the animal, Wiskus began treating the animal with medicine. No employee reported Wiskus's conduct to the production manager or the company veterinarian within 48 hours of it occurring.

On February 2, 2017, the company veterinarian visited the farm and found the two animals who should have been euthanized were still alive and suffering. The veterinarian also noticed the crew had not been cleaning the facility as instructed previously. The crew acknowledged disregarding the veterinarian's instructions. However, Niblet stated he previously told Wiskus on two occasions that the animal identified on January 3, 2017, needed to be euthanized.

Claimant was terminated the next day. Wiskus and Jim were also terminated. Niblet was not terminated because he voiced opposition to Wiskus regarding the neglect of the animal that should have been euthanized shortly after January 3, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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).

In this case, claimant violated employer's animal welfare policy by failing to report mistreatment of animals. Claimant's co-workers, Jim and Niblet, also violated the policy. The policy was clearly written and enacted to prevent the very situation that occurred, and none of the employees on the farm followed it. Although Niblet told Wiskus the animal should be euthanized, Wiskus was the person perpetrating the neglect. Niblet did not report Wiskus's conduct to the production manager or the company veterinarian within 48 hours of it occurring as required by policy. Yet, Niblet was not terminated. Even though the claimant violated the animal welfare policy, since the consequence was more severe than another employee received for similar conduct, the disparate application of the policy cannot support a disqualification from benefits.

Because claimant is not disqualified from receiving benefits, the issues regarding overpayment are moot and will not be discussed further in this decision.

DECISION:

The February 28, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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