

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HENRY A MARTINEZ PARADA
Claimant

APPEAL NO. 13A-UI-05174-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OSCEOLA FOOD LLC
Employer

OC: 04/07/13
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 23, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 26, 2013. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Aaron Peterson participated in the hearing on behalf of the employer with a witness, Mike Bradley.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as a smokehouse technician from September 8, 2008 to April 4, 2013. He was informed and understood that under the employer's work rules, insubordination or walking off the job prior to release from his team lead was ground for termination.

On April 1 the claimant started work at 6 a.m. Only the smokehouse employees were working that day to finish up some work and do some cleaning. The claimant approached the team lead after about an hour and a half and said he had finished his work and wanted to leave. The team lead told the claimant that he could not leave because there was still some cleaning that the lead wanted him to do. He showed the claimant the cleaning work, which should have taken about five hours to do. He told the claimant that he could leave after finishing the cleaning.

The claimant worked until 8:10 a.m. and left without completing much of the assigned cleaning. He did not have permission to leave. The team lead came in at 6 p.m. and took a call from the claimant. He told the team lead that there was still a little cleanup work left. The team lead later went to the claimant's work area and found that not much cleaning was done.

On April 4, the team lead met with the claimant. The claimant asserted that he left because he was not feeling well, but he did not contact the team lead to get approval and had said nothing about being sick when they talked on the evening of April 1. The employer discharged the claimant on April 4 for insubordination and walking off the job without permission.

The claimant filed for and received a total of \$1,984.00 in unemployment insurance benefits for the weeks between April 7 and May 18, 2013.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated April 23, 2013, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs