

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROSCOE L ARLOTTA**  
Claimant

**APPEAL NO. 08A-UI-05634-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CURLYS FOODS**  
Employer

**OC: 05/18/08 R: 01  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated June 9, 2008, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 2, 2008. The claimant participated. The employer participated by Betty Lopez, Human Resource Assistant; Dan Belvin, Quality Assurance Supervisor; and Nancy Kent, Quality Assurance Manager.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work and whether the claimant is overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from December 19, 2005 until May 15, 2008 when he was discharged for falsification of company records. Mr. Arlotta was employed as a quality assurance technician on a full-time basis and was paid by the hour. His immediate supervisor was Dan Belvin.

The claimant was discharged based upon an incident that occurred on May 15, 2008 when the employer reasonably concluded the claimant had attempted to falsify a company document. On that date an employee noted a pallet of food product that had been stickered as passing the company's 24-hour leak check for defective packaging. It was obvious that the leak check had not taken place, an inquiry was made as Mr. Arlotta was the quality assurance technician assigned to check pallets that day. Mr. Arlotta indicated that he had not checked the pallet although it had been placed in an area for pallets that had been checked. When asked for a checklist that the technician uses each day, the claimant did not have the required checklist and indicated that it was "missing." Subsequently, the claimant was observed filling out a new checklist in violation of company policy. Quality assurance technicians are trained that the checklist entries must be done at the same time that the checking takes place. Based upon the

series of events including the unusual circumstances of Mr. Arlotta not being able to find his daily checklist that had never been misplaced before, the employer concluded that the claimant had falsified his work as a quality assurance technician. The matter was considered to be serious as improperly inspected and documented shipments could result in serious liability for the company and loss of future sales.

It is the claimant's position that the checking of company products for the 24-hour leak check is routinely disregarded, that company management was aware that he was obtaining a second sheet to complete, and that he was not completing the new sheet from memory but based upon information on stickers that had previously been placed on pallets.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes that Mr. Arlotta was discharged for misconduct in connection with the employment. It does. The evidence in the record establishes that Mr. Arlotta had been trained and was aware of his responsibility as a quality assurance technician. An important responsibility was checking company packaging on meat products to ensure that they were airtight after a specified period of time prior to shipping. When the employer discovered a pallet of product during Mr. Arlotta's shift that had been stickered as inspected, the employer noted that the product had not been inspected. This led to a further inquiry. When the claimant suddenly could not "find" the check-off sheet that had been routinely used by the claimant and never lost before, the employer reasonably became increasingly suspicious. When the claimant was subsequently observed in effect recreating a 24-hour leak or check sheet in violation of company policy and the training that had been given to him, a decision was made to terminate Mr. Arlotta from his employment. The evidence does not substantiate that the claimant had disputed the basis for his discharge at the time of his termination.

For the reasons state herein, the administrative law judge concludes that the employer has sustained its burden of proof by a preponderance of the evidence in establishing that the claimant was discharged for misconduct. Unemployment insurance benefits are withheld.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$1,440.00.

**DECISION:**

The representative's decision dated June 9, 2008, reference 01, is hereby reversed. The claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided that he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,440.00.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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