

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRADLEY M HEATH**

Claimant

**APPEAL NO. 13A-UI-05398-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IA SEL FARMS INC/IA SELF FARMLP**

Employer

**OC: 07/01/12**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

Bradley Heath filed a timely appeal from a representative's decision dated April 29, 2013, reference 04, that denied unemployment insurance benefits finding the claimant was discharged from work for violation of a non-company rule. After due notice was provided, a telephone hearing was held on June 12, 2013. The claimant participated. The employer participated by Ms. Cathy Reiken, Human Resource employee; Mr. Arthur Schwab, GDU Manager; Mr. Dan Dean, GDU Supervisor; Mr. Jerry Brown, Maintenance Supervisor, and Craig Ward, Human Resource Specialist. Employer's Exhibits A, B, and C were received into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Bradley Heath was employed by Iowa Select Farms, Inc. from January 8, 2013 until March 29, 2013 when he was discharged from employment. Mr. Heath was employed as a full-time maintenance technician and was paid by salary. His immediate supervisor was Jerry Brown.

Mr. Heath was discharged from his employment with Iowa Select Farms, Inc. based upon the employer's reasonable conclusion that Mr. Heath had been untruthful in his application for employment and had violated the company's biosecurity policies by having a pork processing facility on his personal property while employed by the company. The company has a strict biosecurity policy intended to prevent cross-contamination of Iowa Select Farm hogs from other sources. The company makes inquiries of applicants through the application process and questionnaires and provides employees extensive training on the biosecurity requirements.

When applying for his job, Mr. Heath was given an interview form with questions about whether there are hogs on the applicant's property and whether any one works with hog production, or processing. Mr. Heath answered all questions "no". These questions about whether the perspective employee or anyone under the household owned hogs or if there were any hogs on

the property, whether the applicant or any family members are pork processors or whether the applicant or any member of the household intends to work for other pork processors, were to tell the company of potential contamination sources, and to alert the applicant to the importance of the issue. Based upon the claimant's negative answers to the questions on the application for employment, Mr. Heath was hired. The claimant then underwent extensive biosecurity training but did not disclose to the company any possibility of cross-contamination from his personal sources.

On March 28, 2013, Mr. Schwab and another employee encountered Mr. Heath on an Iowa Select Farm location. During the conversation, Mr. Heath stated he had recently built a hog processing building to process his own pork on his property and further stated, "If the company found out I had that building, they'd fire me." The matter was immediately reported to upper management as the parties realized that Mr. Heath's conduct had compromised the company's biosecurity requirements.

Mr. Heath was questioned and admitted that he had a hog processing facility on his property. The claimant was discharged at that time because he had knowingly violated biosecurity policies. While being driven home by his supervisor, Mr. Brown, Mr. Heath stated he had processed 13 pigs at his home facility in the month of December. The employer then concluded that Mr. Heath's earlier statements on the application for employment were untruthful when they were made.

It is the claimant's position that he did not understand at all that processing of pork at home would violate Iowa Select Farms' biosecurity policies. Mr. Heath further maintains that he did not actually process pork but occasionally processed a hog along with deer to make sausage, etc. Mr. Heath asserts that he processed 13 hogs at his home facility in the month of December for "family use only." The claimant believes that the company should have been aware of his activity with pork because they knew that he was going wild boar hunting in mid-March 2013 and did not object. The claimant had notified his supervisor en route home from wild boar hunting that he had been on a wild boar hunt and was not allowed by the company to work near any of the hog confinement areas for 72 hours after his return from the hunt. Mr. Heath did not take the opportunity at that time to provide further information to his employer about his home processing activities.

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

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. 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.

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 insurance benefits. 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. of Appeals 1992).

In this matter the evidence is clear that Mr. Heath knew or should have known that maintaining a hog processing facility on his property would compromise Iowa Select Farms' biosecurity systems and job requirements. The claimant completed a questionnaire before being employed making numerous inquiries about any outside contact with swine and the claimant answered all questions in the negative although he was aware that he had processed 13 swine at his home processing facility in the month of December. Upon returning from a wild boar hunt, claimant was specifically instructed that he must refrain from working with hogs at the Iowa Select Farm facility for 72 hours because of the biosecurity requirements. Then the claimant admitted to Mr. Schwab on March 28, 2013: "If the company found out I had that building, they'd fire me." The administrative law judge thus concludes that Mr. Heath knew of the company's biosecurity policies and that he was in violation of them.

Although the administrative law judge is cognizant that Mr. Heath maintains that he had no idea whatsoever that he was in violation of company policy, the claimant's testimony strains credibility.

The weight of evidence is clearly established in favor of the employer. Claimant was discharged when he knowingly violated an established company policy. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated April 29, 2013, reference 04, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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