

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TAYLOR A SHORT
Claimant

OSCEOLA FOOD LLC
Employer

APPEAL 17A-UI-08808-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/23/17
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
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:

Osceola Food, LLC (employer) filed an appeal from the August 17, 2017, reference 01, unemployment insurance decision that allowed benefits based upon the determination it discharged Taylor A. Short (claimant) but she did not engage in willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on September 18, 2017. The claimant did not respond to the hearing notice and did not participate. The employer participated through Claim Representative Gloria Her, Human Resource Manager Roberto Luna, and Production Supervisor Richard Kreitzinger. Employer's Exhibit 1 was received. The administrative law judge took official notice of the administrative record, specifically the fact-finding documents.

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: The claimant was employed full-time beginning on August 15, 2016, and was separated from employment on July 14, 2017, when she was discharged. The claimant's most recent position, which she held for approximately four months, was that of Production Operator reporting to Production Supervisor Richard Kreitzinger.

The employer produces food for human consumption. It has in place various safety precautions to prevent foreign objects from entering the final product. In the claimant's department, the machinists will check out tools from the operators. The operator is responsible for counting the tools that are going out to the machinist and recording the tool count on the toolbox checklist. The machinist then confirms the count and records it on the same checklist. At the end of the shift, the machinist counts his or her tools, records the counts on the checklist, and leaves the tool box on a table. The operator gets the toolbox, takes it to the tool storage area, and re-counts the tools to confirm all of the tools have been returned. The operator records his or her final count on the toolbox checklist. If the operator finds that not all of the tools are returned at the end of a shift, he or she is to notify a supervisor and the line is shut down until the employees find the tool. This is done to prevent the tool from breaking a machine or ending up in the final food product. The employer has a written policy regarding falsification of company records and warns employees during training that failure to follow the tool counting procedure and falsifying company records will result in discharge.

At the end of the shift on July 13, 2017, the claimant received the toolbox from Machinist William. He had recorded there were three $\frac{3}{4}$ wrenches in the toolbox. Somehow, one wrench was on the table next to the toolbox when the claimant picked it up. She took the toolbox back to the tool storage area. The claimant recorded on the toolbox checklist that there were three $\frac{3}{4}$ wrenches. An employee found the $\frac{3}{4}$ wrench left on the table and turned it over to Kreitzinger that evening. Kreitzinger, who had processed the toolbox checklists for the evening, knew that no one had reported a missing wrench.

The next morning the claimant reported to Kreitzinger that she only had two $\frac{3}{4}$ wrenches in the toolbox. He asked if she had counted the tools the night before. The claimant admitted she had not counted the tools and had only copied what William had reported. The claimant also acknowledged that she knew her job was in jeopardy due to her actions. The claimant was discharged for falsifying the employer's documents and not following the tool counting protocol.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,892.00, since filing a claim with an effective date of July 23, 2017, for the four weeks ending August 19, 2017. The administrative record also establishes that the employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

"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 of proof in establishing disqualifying job misconduct. *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). 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). 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).

The employer has a substantial interest and legal duty to provide safe food product to the general public. The employer has enacted various policies and procedures to ensure that interest is met. The unrefuted testimony is that the claimant did not count the tools on the evening of July 13, 2017 and falsified the employer's document to make it appear that she had counted the tools. The claimant deliberately disregarded the employer's interest and her conduct was a violation of the standards of behavior the employer has a right to expect of its employees. This is misconduct even without prior warning. Accordingly, benefits are denied.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. The unemployment insurance law provides that benefits must 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. Iowa Code § 96.7. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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. Iowa Admin. Code r. 871-24.10(1). The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10. In this case, the claimant has received benefits but was not eligible for those benefits. Since the employer did participate in the fact-finding interview, the claimant is obligated to repay to the agency the benefits she received and the employer's account shall not be charged.

DECISION:

The August 17, 2017, reference 01, unemployment insurance decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

The claimant has been overpaid unemployment insurance benefits in the amount of \$1,892.00 and is obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and its account shall not be charged.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/rvs