

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD A CURIEL
Claimant

APPEAL NO. 09A-UI-06095-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRIPROCESSORS INC
Employer

OC: 11/02/08
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Agriprocessors, Inc. filed a timely appeal from an unemployment insurance decision dated April 7, 2009, reference 05, that allowed benefits to Chad A. Curiel. After due notice was issued, a telephone hearing was held May 14, 2009 with Payroll and Human Resources Assistant Diane Currero participating for the employer. Although Mr. Curiel had provided a telephone number, that number was answered by a recording when called at the time of the hearing. The administrative law judge left the toll-free number of the Unemployment Insurance Appeals Bureau with instructions for the claimant to call if he wished to participate. There was no further contact from the claimant prior to the closing of the record.

ISSUES:

Did the claimant leave work with good cause attributable to the employer?

Was the claimant discharged for misconduct?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Chad A. Curiel was hired by Agriprocessors, Inc. on June 1, 2008. He was working on poultry cutup when he walked off the job on February 5, 2009 and never returned. The employer processed the separation as a discharge.

Mr. Curiel has received unemployment insurance benefits since filing an additional claim effective Marcy 8, 2009.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the separation from employment was a disqualifying event. It was.

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.

Since the employer processed the separation as a discharge, the administrative law judge will first analyze the evidence pursuant to 871 IAC 24.32. It first appears that the claimant was insubordinate in walking off the job without permission and that he was absent thereafter without excuse because he did not return. The administrative law judge concludes from this evidence that the separation could be considered a discharge for misconduct, resulting in disqualification.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

An individual who abandons a job is ordinarily considered to have left work voluntarily without good cause attributable to the employer. The administrative law judge could infer claimant's intent to sever the employment relationship by leaving and failing to return or contact the employer. If the evidence were viewed as a quit, the result also would be disqualification.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether the claimant must repay benefits already received is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated April 7, 2009, reference 05, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The question of repayment of benefits is remanded to the Unemployment Insurance Services Division.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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