

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LONNIE STERNER
Claimant

APPEAL NO: 11O-UI-06184-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRO INC
Employer

OC: 07-25-10
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 19, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 13, 2010. The claimant participated in the hearing. Phil Hingst, Business Process Manager; Rhonda Griffin, Corporate Human Resources Leader; and Tracey Lennon, Human Resources Assistant, participated in the hearing on behalf of the employer. Employer's Exhibits One through Ten were admitted into evidence. The record was held open until the claimant received the exhibits but he did not respond to the administrative law judge's repeated calls to confirm he received the exhibits and set a time to discuss the exhibits before the record was closed. Consequently, the record was closed Monday, January 31, 2011.

The claimant appealed the decision to the Employment Appeal Board and the case was remanded to the Appeals Section, in a decision dated May 6, 2011, because the voice recording of the hearing could not be located. Subsequently, a new hearing was scheduled and held July 13, 2011. The claimant participated in the hearing with Attorney Erin Dooley. Rhonda Griffin, Corporate Human Resources Leader and Tracey Lennon, Human Resources Assistant, participated in the hearing on behalf of the employer. Phil Hingst, Business Process Manager, was not available at the time the second hearing was held. Employer's Exhibits One through Ten were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time product inspector/finisher for Centro from January 25, 1993 to July 28, 2010. One of the employer's jobs is to build fuel tanks for John Deere and it must make sure the tanks will not leak because of the potential safety issues surrounding the tanks. The claimant was observed twice within a short period of time failing to pressure test fuel

tanks properly on July 23 and 24, 2010. The testing involves submerging the tank underwater, pressurizing it and observing it for 90 seconds at which time the system automatically informs a second employee to come and visually inspect the tank and both employees must depress a switch that informs the machine the second employee was present. The first incident occurred when the claimant "did not utilize the second inspector for the last time segment of the test." The claimant "removed the fuel tank, engraved the tank as though it passed the test, completed the secondary processing to the tank, and then placed the tank in the final packaging unit as a "good part." The employer interviewed the claimant about the situation after two leaders observed him fail to pressure test the fuel tanks properly. The claimant indicated he did not require the second inspector to come over for the second part of the pressure test and stated his personal opinion that "the tank was good as it did not leak during the time that he did test the part." The claimant said he did not agree with the employer's testing procedure of the fuel tanks. The employer asked the claimant if he remembered all of the conversations held during weekly team meetings about following the Pressure Testing Process "explicitly." The claimant stated he remembered but did not agree with the process. The claimant had signed a "Personal Process Commitment & Empowerment" policy stating he understood the importance of following "established processes" and was "committed to do so." He was also talked to personally about the policy March 26, 2010, and was told further incidents could result in disciplinary action up and including termination. The employer again explained why they pressure test the product the way they do and that there was "no latitude" in following the testing process. Later that day the claimant was observed failing to conduct the second part of the test and putting the fuel tank in the shipping rack. When the employer spoke to the claimant about the incident he admitted he did not do the secondary test. The employer again asked him if he recalled all of the previous conversations about the Pressure Testing Procedures and the claimant admitted that he did but again stated he did not agree with the process. After the employer discussed the matter internally it made the decision to terminate the claimant's employment effective July 28, 2010.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code § 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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer builds fuel tanks for John Deere. Due to the serious safety issues involving fuel tanks the employer has instituted strict testing procedures to make sure the tanks do not leak. The claimant did not agree with the policy, felt it was unnecessary and slowed the process down, and as a result he willfully and knowingly failed to follow the testing procedures on at least two occasions July 23 and 24, 2010. When confronted by the employer about the situation the claimant admitted skipping steps of the testing process because he did not feel it was necessary. The employer talked about the testing procedures during its weekly team meetings and the claimant stated to the employer he understood the process but did not agree with it. Additionally, he was warned about not following the procedures March 26, 2010. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

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. 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. 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 not eligible for those benefits. The matter of determining 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 August 19, 2010, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs