

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DARREN R DEMOSS
Claimant

PROGRESSIVE PROCESSING LLC
Employer

APPEAL 17A-UI-09029-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/06/17
Claimant: Respondent (1)

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

Progressive Processing, LLC (employer) filed an appeal from the August 25, 2017, reference 01, unemployment insurance decision that allowed benefits based upon the determination Darren R. DeMoss (claimant) was discharged for excessive absences, but it was not misconduct as the absences were properly reported and related to illness. The parties were properly notified about the hearing. A telephone hearing was held on September 22, 2017. The claimant participated. The employer participated through Human Resources Coordinator Izzy Neitzel and Day Production Supervisor Jordan Klein. Claimant's Exhibits A and B were received. Employer's Exhibits 1 and 2 were received. Official notice was taken 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 as a SPAM Mix/Pickle Operator beginning on August 23, 2010, and was separated from employment on August 10, 2017, when he was discharged. According to the claimant's performance evaluation from April 2017, the claimant was rated an overall rating of "Exceeds Expectations" and he'd had perfect attendance the prior year.

On August 9, 2017, the claimant was ill but reported to work to see if he could make it through the day. During the morning production meeting, Day Production Supervisor Jordan Klein told the claimant that he would be working with Cory, a new employee who had only worked for the

employer for two weeks, on the SPAM Bacon line. This line had additional steps to give the SPAM its bacon flavoring. The claimant requested to have the other SPAM Mix/Pickle Operator Jana work the line instead of or in addition to Cory. Klein said he would check into it.

A few minutes after the meeting, the claimant went to the office to get his paperwork and again asked if Jana could work the line with him. Klein told the claimant he would be working with Cory. The claimant questioned this decision and Klein again reiterated the claimant needed to go work with Cory. The claimant then told Klein he was going home sick, turned, and exited. Klein did not have a response to the claimant's statement and let him go without further discussion.

Klein reported the incident to Human Resources and an investigation was conducted. The claimant was asked if he would have stayed if Jana would have been assigned to his line. He stated he would probably have stayed. The employer determined the claimant had been insubordinate and discharged him. The claimant had not received any previous warnings for insubordination.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,275.00, since filing a claim with an effective date of August 6, 2017, for the seven weeks ending September 23, 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 for no disqualifying reason. Benefits are allowed.

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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of*

LeClaire, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* The findings of facts lay out how the factual issues have been resolved.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial."

The conduct for which the claimant was discharged was an isolated incident of poor judgment and, inasmuch, as the employer had not previously warned the claimant about the issue leading to the separation, it has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The employer did not tell the claimant when he left on August 9 that if he left he would lose his job. The claimant had no prior warnings for similar issues that would have put him on notice that his job was in jeopardy. An employee is entitled to fair warning that the employer will not or will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need to be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

DECISION:

The August 25, 2017, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn