

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER GOLDERMANN**

Claimant

**APPEAL NO: 12A-UI-13592-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AG PROCESSING INC A COOPERATIVE**

Employer

**OC: 10/21/12**

**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Ag Processing, Inc. (employer) appealed an unemployment insurance decision dated November 7, 2012, reference 01, which held that Christopher Goldermann (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 13, 2012. The claimant participated in the hearing. The employer participated through John Ramsey, Plant Superintendent and Robin Moore, Employer Representative. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time utility worker from March 8, 2012 through October 9, 2012 when he was discharged for failing to maintain contact with the employer and failure to return to work while working for another employer. He was taken off work on September 5, 2012 due to a non-work-related illness when he was diagnosed with mononucleosis. A physician from the Manning Regional Healthcare Clinic released the claimant to light duty on September 13, 2012 and the claimant gave the medical excuse to the employer. The employer accommodated the claimant's work restrictions and placed him in a light-duty position in which he could sit down. The claimant worked 90 minutes and stopped because he said the work was too hard.

The employer's handbook requires employees to call in every day they are going to be absent. The claimant signed for a copy of the handbook but did not call in every day. His supervisor spoke with him on September 18, 2012 and directed him to call Plant Superintendent John Ramsey but the claimant never called the employer. On October 1, 2012, the claimant dropped

off another medical excuse that took him off work completely. He did not speak with anyone but just dropped off the note which was also from the Manning Regional Healthcare Clinic.

On October 8, 2012, a co-employee reported that he saw the claimant driving a semi-truck in town. Mr. Ramsey called the claimant to ask if this was true and the claimant admitted that he was driving the truck but it was for his father-in-law's business. The employer discharged him on the following day.

The claimant filed a claim for unemployment insurance benefits effective November 7, 2012 and has received benefits after the separation from employment.

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

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on October 9, 2012 for failing to maintain contact with the

employer and failing to work while he worked for a different employer. The fact that the other employer is his father-in-law is of no consequence. If the claimant was able to work driving a semi-truck, he was able to return to work for the employer but he refused to do so. His actions demonstrate an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated November 7, 2012, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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