

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN J WIGGINS

Claimant

APPEAL NO. 10A-UI-05098-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC

Employer

**Original Claim: 02/28/10
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Beef Products, Inc. (BPI) filed an appeal from a representative's decision dated March 24, 2010, reference 01, which held that no disqualification would be imposed regarding Dustin Wiggins' separation from employment. After due notice was issued, a hearing was held by telephone on May 17, 2010. Mr. Wiggins participated personally. The employer participated by Jennifer Stubbs, Human Resources Benefits Specialist. Exhibits One through Six were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Wiggins was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Wiggins was employed by BPI from July 28, 2009 until February 27, 2010 as a full-time laborer. He was discharged from the employment after receiving a series of disciplinary actions.

Mr. Wiggins received a written warning on November 3, 2009 after it was discovered that he failed to disclose a prior injury during his pre-employment physical. He had received medical attention for a pulled muscle in his back but did not mention it during the physical. He received another written warning on November 5 because he dropped the guard from an auger into the auger. He was performing the task alone but had been told in the past that he was to be sure to have help when he was removing the guard. Mr. Wiggins received a written warning and three-day suspension on February 20, 2010 because he refused to come to the plant as directed to have the company nurse examine an injury.

The decision to discharge Mr. Wiggins was based on his refusal to perform his job. On February 26, he was directed to palletize boxes in rotation with other workers. He was to palletize for 30 minutes and then another worker would assume the task. Mr. Wiggins did not

have any medical restrictions that prevented him from performing the job. He told the employer that the repetitive motion of palletizing bothered his back. He was told he would need to see the company nurse if he could not perform the palletizing. He did not do so and, as a result, was suspended pending a further determination. He was discharged on February 27, 2010.

Mr. Wiggins filed a claim for job insurance benefits effective February 28, 2010. He has received a total of \$5,236.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, the administrative law judge concludes that the employer has satisfied its burden of proof.

Mr. Wiggins deliberately failed to ask for assistance when removing an auger guard on October 31 in spite of having been given prior instructions that he was not to perform the task alone. His conduct had the potential of causing injury to himself or damage to the employer's equipment. He refused to report to the plant to see the company nurse regarding a work injury on February 20. It was not unreasonable for the employer to require medical attention for an injury that was alleged to be work-related. It was also important to see the nurse to make sure he was not asked to perform work that might aggravate his injury. The refusal to accede to the employer's request was unreasonable.

In spite of knowing from the warnings that his continued employment was in jeopardy, Mr. Wiggins again refused to perform as directed by the employer on February 26. His doctor had not imposed any restrictions that would prevent him from performing the palletizing as directed. Although he may have had a legitimate reason for not performing the palletizing, he failed to see the company nurse as directed to obtain confirmation that he should not perform the task.

The employer has the right to expect an employee to follow reasonable instructions. Mr. Wiggins did not have justification for not following the instructions referred to herein. His actions compromised the employer's interest in making sure workers were not injured on the job or that pre-existing conditions were not aggravated by the work. Given the nature of the conduct and the relatively short period of time over which the incidents occurred, the administrative law judge concludes that disqualifying misconduct has been established. Accordingly, benefits are denied.

Mr. Wiggins has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated March 24, 2010, reference 01, is hereby reversed. Mr. Wiggins was discharged by BPI for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Wiggins will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw