

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CRUZ M RODRIGUEZ**  
Claimant

**APPEAL NO. 07A-UI-01172-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEEF PRODUCTS INC**  
Employer

**OC: 01-07-07 R: 03**  
**Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated January 25, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 22, 2007. Although notified, the claimant did not participate. The employer participated through Mr. Rick Wood.

**ISSUES:**

The issues in this matter are whether the claimant was discharged for misconduct in connection with her work and whether the claimant is overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from September 31, 2006 until November 9, 2006, when she was discharged for excessive unexcused absenteeism. Ms. Rodriguez was employed as a full-time production worker. The claimant was discharged based upon what the employer considered to be excessive absenteeism that was unexcused. The claimant was aware that the employer expected employees to provide notice to the employer if they were going to be absent or tardy. Ms. Rodriguez was discharged after she failed to report for scheduled work and did not provide notification on November 9, 2006. The claimant had been previously warned with respect to the requirement of notification on November 7, 2006. She had reported late without providing notification as required. During the short course of her employment, Ms. Rodriguez had been absent on numerous occasions and was aware that her employment was in jeopardy.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge finds that the evidence establishes that the claimant's discharge took place under disqualifying conditions. Ms. Rodriguez was aware that she had been absent on numerous occasions and was aware that the employer considered her absenteeism to be excessive. Although the claimant was aware that the employer expected employees to report impending absences or tardiness, the claimant did not do so on November 7, 2006 and November 9, 2006, leading to her discharge from employment. There being no evidence to the contrary, the

administrative law judge finds that the employer has sustained its burden of proof in establishing that the claimant's absenteeism was excessive and unexcused at the time of discharge.

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.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The January 25, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,170.00.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

pjs/kjw