

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THUAN PHU
Claimant

APPEAL NO: 09A-UI-06743-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTERBAKE FOODS
Employer

OC: 04/20/08
Claimant: Respondent (2/R)

96.5-2-a - Discharge

STATEMENT OF THE CASE:

Interbake Foods (employer) appealed a representative's April 20, 2009 decision (reference 04) that concluded Thuan Phu (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 28, 2009. The claimant did not respond to the hearing notice. No one participated on the claimant's behalf. Jill Gill, an assistant human resource manager, appeared on the employer's behalf. During the hearing, Employer Exhibits One through Four were offered and admitted as evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 16, 2008. The claimant worked as a full-time employee in the packaging department. At the time of hire, the claimant received a copy of the employer's Rules of Conduct. The rules inform employees they will be disciplined if they engage in horseplay, use profane language or fail to report an absence at least one hour before a scheduled shift. (Employer Exhibit Four.)

On October 23, 2008, the employer gave the claimant a written warning for engaging in horseplay or scuffling with another employee and using profane language at work. The employer warned the claimant that another occurrence of a similar nature would result in his discharge. (Employer Exhibit Three.) On December 1, 2008, the claimant did not call or report to work. As a result of the December 1 incident on December 4, the employer gave the claimant a written warning and suspended him from December 5 through 11, 2008. The warning informed the claimant that another similar occurrence within the next six months would result in his discharge. (Employer Exhibit Two.) On March 30, 2009, the claimant was scheduled to work at 3:00 p.m. At 2:37 p.m., he notified the employer he would be absent.

Since the claimant again violated a rule of conduct, on March 31, the employer discharged the claimant. (Employer Exhibit One.)

The claimant established a claim for benefits during the week of April 20, 2008. He reopened his claim during the week of March 29, 2009. He has filed for and received benefits since March 29, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known after he was suspended in December that when he was unable to work as scheduled the employer required employees to notify the employer at least one hour before a scheduled shift. The claimant did not notify the employer on March 30 one hour before his scheduled shift. Since the claimant did not participate in the hearing, it is not known why he waited until 2:37 p.m. to report he was unable to work as scheduled. Based on the evidence presented during the hearing, the employer discharged the claimant for intentionally and substantially failing to follow the employer's code of conduct. The employer established that the claimant committed work-connected misconduct. As of March 29, 2009, the claimant is not qualified to receive benefits.

Since the claimant received some benefits after he was discharged, the issue of overpayment is remanded to the Claims Section.

DECISION:

The representative's April 20, 2009 (reference 04) is reversed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 29, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs