

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL MITCHELL
Claimant

APPEAL NO: 09A-UI-17698-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

OSCEOLA FOODS CORPORATION
Employer

OC: 10-25-09
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 18, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 5, 2010. The claimant participated in the hearing. Aaron Peterson, Human Resources Manager; Robert Gray, Associate Maintenance Engineer; and George Parlier, Maintenance Supervisor, participated in the hearing on behalf of the employer. Employer's Exhibits One through Six were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time industrial maintenance mechanic for Osceola Foods Corporation from August 14, 2006 to November 2, 2009. On September 30, 2008, the claimant received a written warning for failure to lock out a piece of equipment (Employer's Exhibit Four). While he was gone a production worker turned the machine on which caused further damage to the machine (Employer's Exhibit Four). On May 5, 2009, the claimant received a written warning and one week suspension for again failing to lock out a piece of equipment (Employer's Exhibit Three). On September 4, 2009, Maintenance Supervisor George Parlier talked to the claimant about production issues throughout the evening but the claimant failed to tell him that he was unable to complete any preventive maintenance (PMs) on the machines (Employer's Exhibit Six). Additionally, the claimant did not put his work packet in the correct place September 4 or 5, 2009 (Employer's Exhibit Six). The employer expected the claimant to communicate any problems, issues or PMs that needed to be done, to the supervisor on duty so the following shift could take care of the situations (Employer's Exhibit Six). On October 27, 2009, the claimant left one hour early without permission with work left to be done. He did not check out with Associate Maintenance Supervisor Robert Gray to see what other work he could do but instead "took the liberty of leaving" one hour early because he only had one PM left to do

and decided he could do that later in the week. Employees are not required to check out with their supervisor if leaving at their regularly scheduled time but are required to check out with their supervisor if they are leaving early. The employer issued another written warning and suspension to the claimant and because it was his second suspension in a rolling 12-month period his employment was terminated per the employer's policy (Employer's Exhibits One and Two).

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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 of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant effectively denied he did anything wrong by leaving early October 27, 2009, and refuses to take responsibility for doing so, his decision led to his termination of employment because it resulted in his second written warning and suspension within a 12-month period of time. The claimant argued that he did not have any other work to do that night so he "took the liberty of leaving" early. The employer

requires employees to check out with their manager if leaving early to see if there is any other work that can be done. The employer followed its progressive disciplinary policy and terminated the claimant's employment. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The November 18, 2009, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs