

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REFIKA HALKIC**  
Claimant

**APPEAL NO: 10A-UI-13266-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEEF PRODUCTS INC**  
Employer

**OC: 07-25-10**  
**Claimant: Respondent (2-R)**

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 September 15, 2010, 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 November 9, 2010. The claimant participated in the hearing with Interpreter Janja Pavetic. Rick Wood, Human Resource Manager and Jennifer Stubbs, Human Resources Benefits Supervisor, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three 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 laborer for Beef Products, Inc. from June 8, 2010 to July 23, 2010. The employer requires employees to complete an application process which includes a pre-employment physical and then the employer conducts a background check on the applicant. The claimant completed her pre-employment physical and accompanying questionnaire June 3, 2010. She answered no to the question of, "Have you ever been refused employment or been unable to stay at a job because of" followed by several scenarios including "1. E. Hand, joint or back pain problems" and yes to "5. Have you ever been sent to a doctor as a result of a work injury or disease, or had a workers' compensation claim?" (Employer's Exhibit One). In the explanation of question five the interpreter wrote, "went to doctors (sic) for eye but now ok. Got something in her eye" (Employer's Exhibit One). The employer also conducts a background check on new employees and the claimant's was received by the employer June 18, 2010 (Employer's Exhibit Two). Her background check showed she had a workers' compensation claim in Iowa with the date of her back injury being August 5, 2005, when she was employed at Tyson Fresh Meats (Employer's Exhibit Two). Because the claimant's answers on her pre-employment physical and the background check did not match the employer questioned the claimant about the situation. The claimant stated she brought

documentation about a non-work-related back injury and surgery in 2008 and was released to full duty at that time. When the employer asked her about failing to report the back injury at Tyson she indicated she did not see why that was relevant because she reported the non-work-related back injury and surgery although she actually only reported the eye injury on her pre-employment physical. On July 2, 2010, the employer suspended the claimant and told her she needed to go to Tyson and pick up her medical documentation from her workers' compensation claim so the employer could try to determine exactly what happened with regard to the two back injuries the claimant admitted. The employer also did not understand why the claimant listed her eye injury but failed to mention her two back injuries. On July 22, 2010, the claimant provided the medical documentation and the employer verified there were two separate back issues and determined the claimant falsified her application and pre-employment physical by failing to report the back injuries, especially the workers' compensation claim with Tyson. Although the previous injury would not have barred the claimant from employment, the employer needs the correct information because aside from showing the employee's truthfulness and honesty it helps it determine if she can meet the physical requirements of the job and where she should be placed. The employer terminated the claimant's employment July 23, 2010, for falsifying a company document.

The claimant has claimed and received unemployment insurance benefits since her 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.

871 IAC 24.32(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant failed to list the workers' compensation back injury she suffered with Tyson Fresh Meats in August 2005 on her employment application and pre-employment physical. While the claimant contends she was not asked those questions by the interpreter, the interpreter did not have anything to gain by not asking the claimant the questions and did not even know the claimant whereas the claimant did potentially have something to gain by refraining from providing information about her previous workers' compensation claim. She did mention her eye injury when asked question number five about whether she had ever been sent to a doctor as a result of a work injury or disease, or had a workers' compensation claim but did not tell the interpreter about her back injuries. That demonstrates that she was asked the question by the interpreter and failed to disclose the facts about her back injury. The claimant also maintains she did not know it was a workers' compensation claim yet she did have an attorney and did receive compensation from Tyson's insurance carrier. The claimant's intentional falsification of her application and pre-employment physical form was material to possibly endangering her health and could have exposed the employer to liability. 871 IAC 24.32(6). 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). 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 September 15, 2010, 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 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs