

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**REX A HEINS  
241 W POST ST  
POSTVILLE IA 52162**

**AGRIPROCESSORS INC  
PO BOX 920  
POSTVILLE IA 52162-0920**

**Appeal Number: 06A-UI-04350-DWT  
OC: 03/19/06 R: 04  
Claimant: Respondent (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge  
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Agriprocessors, Inc. (employer) appealed a representative's April 13, 2006 decision (reference 01) that concluded Rex A. Heins (claimant) was qualified to receive unemployment insurance 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 8, 2006. The claimant participated in the hearing. Elizabeth Billmeyer, the human resource manager, appeared on the employer's behalf. During the hearing, Employer's Exhibits One through Three were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on January 11, 2006. The claimant worked full time as a maintenance technician. The employer hired the claimant with the understanding he had to satisfactorily complete a 90-day probationary period. The employer's attendance policy allows employees two excused absences in a 90-day period. If an employee has more than two absences, the employer starts a progressive discipline. When an employee reports to work late two times or leaves work early two times, the employer counts this as one attendance occurrence.

On February 14, 2006, the claimant received a written warning for attendance problems. (Employer Exhibit One) The claimant reported to work late on February 7 and 8. He was late these days because of transportation problems. The claimant also returned back from lunch late on February 7, 8, 9, and 10. The employer allows employees a 30-minute lunch break. The claimant always goes out for lunch and on these dates he was not served his lunch timely. As of February 14, the claimant had accumulated three attendance occurrences.

The claimant received another written warning and a two-day suspension for attendance issues on February 28, 2006. (Employer Exhibit Two) The claimant received this warning and suspension because he was late for work on February 17, 21, 22 and 24. The claimant was absent on February 26, 2006. The claimant served his two-day suspension on February 28 and March 1, 2006. Even though the claimant called when he was going to be late for work, the employer told him reporting to work even a minute late was unacceptable.

The claimant was then late for work on March 8, 9, 15 and 16. On March 17, the employer would have discharged the claimant but did not because the claimant was ill and unable to work March 17 through 20, 2006. The claimant provided a doctor's statement for these absences. The employer discharged the claimant for excessive absenteeism, which violated the employer's attendance policy.

The claimant established a claim for unemployment insurance benefits during the week of March 19, 2006. The claimant filed claims for the weeks ending March 25 through May 6, 2006. The claimant received a total of \$1,959.00 in benefits for these weeks.

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 § 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 law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew his job was in jeopardy on February 28 when he received a second written warning and a two-day suspension for repeated attendance problems. The primary reason the claimant had an attendance problem was because he reported to work late and was late coming back from his lunch break. The employer even told the claimant that calling when he was late did not make any difference because the employer expected employees to report to work on time and did not excuse employees even if they were only a minute late.

After the claimant had a two-day suspension, he was again late for work on March 8, 9, 15 and 16. The claimant's repeated failure to report to work on time without a justifiable reason after the employer warned him that his job was in jeopardy constituted work-connected misconduct. As of March 19, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending March 25 through May 6, 2006. The claimant has been overpaid \$1,959.00 in benefits.

#### DECISION:

The representative's April 13, 2006 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 19, 2006. 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 claimant is not legally entitled to receive benefits for the weeks ending March 25 through April 6, 2006. The claimant had been overpaid and must repay a total of \$1,959.00 in benefits he received for these weeks.

dlw/kkf