

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SALOMON P JOSE
Claimant

APPEAL NO: 14A-UI-03036-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OSCEOLA FOOD LLC
Employer

OC: 02/16/14
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.3(7) – Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's March 6, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant responded to the hearing notice, but was not available for the hearing. The claimant did not have his voice mail set up so a message could not be left for him. Aaron Peterson, the human resource manager, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits and has been overpaid benefits.

ISSUES:

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

Has the claimant been overpaid any benefits?

Is the claimant responsible for paying back any overpayment or will the employer be charged for any overpayment of benefits?

FINDINGS OF FACT:

The claimant started working as a full-time production employee in December 2012. The employer's attendance policy informs employees they will be terminated if they receive three written warnings within a year.

On February 3, 2014, the claimant was absent and received his third written notice of discipline for attendance in a year. Before the employer made a final decision to terminate the claimant for on-going attendance issues, Peterson scheduled a meeting with the claimant on February 17. The employer wanted to make sure the February 3 absence could not be excused

so the claimant could continue his employment. The claimant did not show up for the February 17 meeting. Peterson gave the claimant until February 21 to contact him, but the claimant did not. On February 21, the employer terminated the claimant's employment as of February 12, 2014, the claimant's last day of work.

The claimant established a claim for benefits during the week of February 16, 2014. He filed claims for the weeks ending February 22 through March 22, 2014. He received his maximum weekly benefit amount of \$259 for each of these weeks. The employer did not participate at a fact-finding interview that took place before a representative issued the March 6, 2014 determination.

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. 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. Iowa Admin. Code r. 871-24.32(7).

Without the claimant's testimony, the evidence supports the employer's position that the claimant's February 3 was unexcused. Without knowing why the claimant did not report to work on February 3, he did not establish a reasonable explanation for this absence. Therefore, the employer discharged him for reasons that amount to work-connected misconduct. As of February 16, 2014, the claimant is not qualified to receive benefits.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)a, b.

Based on this decision, the claimant is not legally entitled to receive benefits for the weeks ending February 22 through March 22, 2014. He has been overpaid \$1795 in benefits he received for these weeks. Since the employer did not participate at the fact-finding interview, the employer's account will be charged for this overpayment. The claimant is not required to repay these benefits.

DECISION:

The representative's March 6, 2014 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of February 16, 2014, the claimant is disqualified from receiving unemployment insurance benefits.

This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible.

The claimant has been overpaid \$1795 in benefits he received for the weeks ending February 22 through March 22, 2014. The claimant is **NOT** required to pay back this amount. Since the employer did not participate at the fact-finding interview, the employer's account will be charged for the overpayment.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs