

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN M CARRANZA
Claimant

APPEAL NO. 07A-UI-07648-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS DAIRY INC
Employer

OC: 07/08/07 R: 01
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Wells Dairy (employer) appealed a representative's July 30, 2007 decision (reference 01) that concluded Juan Carranza (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 27, 2007. The claimant did not provide a telephone number where he could be reached and, therefore, did not participate. The employer was represented by Lynn Corbeil, Attorney at Law, and participated by Mark McCarty, Organizational Capability Manager, and Jason Boehme, Freezer In Manager. The employer offered one exhibit, which was marked for identification as Exhibit One. Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on June 30, 2002, as a full-time command center technical trainer. The claimant signed for receipt of the company handbook on February 21, 2006. On March 7, 2007, the employer issued the claimant a written warning and a three-day suspension for failure to appear for work or notify the employer of his absence. The employer warned the claimant that further infractions could result in his termination from employment. On June 30, 2007, the employer thought the claimant did not report his absence again and prepared to terminate the claimant. The claimant insisted he telephoned the employer after the employer left a message for him. Even though the claimant did not properly report his absence, the employer gave the claimant the benefit of the doubt and allowed him to continue to work for the employer. The employer again warned the claimant that further infractions could result in his termination from employment.

On July 5, 2007, the claimant was supposed to be at work at 4:45 a.m. He left a message at 5:45 a.m. stating he could not come to work on time. At 8:00 a.m. the claimant telephoned the

employer and said he could not come to work because he was ill. The employer discussed the matter with the claimant when he appeared for work on July 6, 2007. The claimant admitted he did not appear for work because he was intoxicated on July 5, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for 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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's right by failing to appear for work because he was intoxicated. The claimant's disregard of the employer's interests is misconduct. As such, he is not eligible to receive unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department

in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's July 30, 2007 decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$852.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw