

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL L SIMPSON
Claimant

APPEAL NO: 12A-UI-03989-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACH FOOD CO INC
Employer

OC: 03/11/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated April 9, 2012, reference 01, that held the claimant was not discharged for misconduct on March 15, 2012, and benefits are allowed. A telephone hearing was held on June 11, 2012. The claimant participated. Bill Nelson, HR/Security Manager, and Mike Ayersman, Processing Supervisor, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on January 2, 1996, and last worked for the employer as a full-time blender on March 15, 2012. He received the employer policies and his job was covered by a union collective bargaining agreement. Falsification of a company document is grounds for immediate termination.

The employer discharged claimant for falsifying his reason for missing work on March 5 and March 6, 2012. Claimant requested he leave work early on those days and was not required under the employer no-fault policy to offer a reason. He did tell his supervisor he would explain his absences. He had received a second stage written warning for attendance.

On March 7, claimant provided a lengthy explanation to his supervisor that he missed the half-days because he was having a domestic issue with his wife. Later, the supervisor discovered the employer had granted claimant intermittent FMLA for those days that caused to him to report what happened to human resources. Claimant requested and was granted FMLA for the half-days citing his “heart” as a health reason.

The employer in the presence of union representatives confronted claimant on March 15 about using FMLA as the reason for missing work when he told his supervisor it was for a domestic issue. Claimant said it was his word against his supervisor, as he did not really tell him he was missing work for a domestic issue. Claimant had no recent doctor visit or excuse for missing work due to a heart condition issue on March 5/6. The Union grieved the discharge that was denied on March 29 and it was not further pursued.

Claimant has received unemployment benefits on his current claim.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has established claimant was discharged for misconduct in connection with employment on March 15, 2012.

The employer supervisor received lengthy information from claimant on March 7 that he missed work due to a domestic issue and there was nothing said about a heart or health issue. Claimant had a motive to provide false information about his absences due to being at a second stage discipline for attendance issues. Claimant did not visit his doctor or provide any medical information that he missed work due to a health issue and his Union backed-off trying to save job based on claimant's statement and the employer evidence.

The most credible evidence in this matter is that claimant falsified his reason for absences on March 5/6, 2012 that is a violation of employer policy and constitutes job disqualifying misconduct.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment issue was not listed on the hearing notice. Since claimant has now been disqualified by this decision, the overpayment issue is remanded to claims for a decision.

DECISION:

The department decision dated April 9, 2012, reference 01, is reversed. The claimant was discharged for misconduct on March 15, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css