

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILSON SEGOVIA

Claimant

APPEAL NO. 07A-UI-05648-NT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

**CARGILL MEAT SOLUTIONS
CORPORATION**

Employer

**OC: 05-13-07 R: 03
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated May 25, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 25, 2007. The claimant participated personally. The employer participated by Melissa Skinner. Official interpreter was Anna Pottebaum.

ISSUES:

The issues in this matter are whether the claimant was discharged for misconduct in connection with his work and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds the claimant worked for this employer from June 20, 2005 until May 14, 2007 when he was discharged for failing to follow a work directive. Mr. Segovia worked as a full-time production worker and was paid by the hour.

On Saturday, May 12, 2007, the claimant and other production workers on his line were instructed that the work shift would be over within six hours and thus they were not to take a lunch break before ending their shift. In spite of the clear directive given to him by the company management, Mr. Segovia and a number of other workers disregarded the directive and indicated they would finish the job when they returned from lunch and left the production area without authorization. Based upon the claimant's refusal to follow a work directive that had been given to him by company management, the claimant was discharged from employment.

It is the claimant's position that the his normal supervisor was not present on the day in question and that employees desired to take their lunch break as usually scheduled.

Company work rules are stated both in English and Spanish and posted in common areas of the employer's facility.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. The evidence in the record establishes that under a work rule in effect between the company and the employee's bargaining unit that employees who are required to work on a shift that will end within six hours are not guaranteed an unpaid lunch break. On May 12, 2007, the claimant and other workers were specifically instructed to follow this work directive and continue working as the shift that day was going to end in six hours or less. In spite of the clear management directive, the claimant and other workers left the production area without authorization to take lunch at their normal lunch break time. The work rules were printed in both English and Spanish and posted in a common area at the employer's facility.

Because the work rule was allowed under the bargaining agreement between the parties, it was reasonable and the directive given to the claimant by the Plant Superintendent was work-related. As the claimant did not follow a reasonable work-related rule, after being instructed to do so, he was discharged from employment. The administrative law judge finds the claimant's conduct to be in disregard of the employer's interest and standards of behavior it had a right to expect of their employees under the provisions of the Iowa Employment Security Law and the bargaining agreement in effect between the parties. It is, therefore, held the claimant's discharge took place for misconduct in connection with the work. Benefits are withheld.

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.

For the reasons stated herein, the administrative law judge finds the claimant's separation from employment to be disqualifying. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$1,516.00.

DECISION:

The representative's decision dated May 25, 2007, reference 01, is reversed. Claimant was discharged for misconduct in connection with his work. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, providing he satisfies all other conditions of eligibility. The claimant is overpaid unemployment insurance benefits in the amount of \$1,516.00. However, \$226.00 of this amount has been set up on a separate issue, leaving an overpayment of \$1,290.00

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs/kjw