

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**TROY J LAMPERS**

Claimant

**HORMEL FOODS CORPORATION**

Employer

**APPEAL 17A-UI-08168-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/16/17**

**Claimant: Respondent (1)**

---

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the August 2, 2017 (reference 01) unemployment insurance decision that allowed benefits to the claimant based upon his discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on August 30, 2017. The claimant, Troy J. Lampers, participated personally. The employer, Hormel Foods Corporation, participated through hearing representative Jackie Nolan. Employer also participated through witnesses Kari Pollak; Krista Van Horn; and Tami Curci. Employer's Exhibits 1 – 4 were admitted. Claimant's Exhibit A was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Did claimant voluntarily quit the employment with good cause attributable to employer?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a team leader in the employer's food processing plant. Claimant was employed from October 10, 2016 until July 17, 2017, when he was discharged from employment. Claimant's job duties included supervision of production team members.

Part of claimant's job duties was to complete documentation entitled "Hold Tag Accountability Sheets" when product was put on hold for various reasons. Claimant taught himself how to complete the form with instruction from the takeaway drivers. Claimant completed less than 10 hold tag accountability sheets during the course of his employment. The sheet is a form that follows the product along the production line. When it reaches claimant, he is to verify that the quantity packed out reconciles with the quantity initially held. The form has an area for his signature and date, along with a place to circle "Y" or "N" for yes or no regarding reconciliation.

See Exhibit 2. The takeaway driver is responsible for completing the portion of the form where they list the case count and pallet number. The takeaway driver then affixes a yellow sticker to each pallet that is being placed on hold so that the pallet is not loaded into a truck for distribution. The takeaway driver then notes the hold pallets on the employer's system. Claimant believed that he was responsible for reconciling the notes from the initiator and the notes from the takeaway driver on the sheet by confirming that there are the same quantity listed that are packed out with the same quantity that are listed that are initially held.

Claimant reviewed the hold tag accountability sheet for July 12, 2017 and confirmed that the initiator listed four pallets on hold and the takeaway driver listed four pallets that were placed on hold. Claimant was never instructed that he was to physically count each pallet and review that the takeaway driver actually did affix the stickers to the pallets. There are no instructions on Exhibit 2 that would instruct claimant to physically observe the pallets in order to complete a reconciliation. Claimant was discharged for falsification of documentation, which is considered gross misconduct according to the employer's written policies. Claimant did receive a copy of the employer's policies, which provided that gross misconduct could lead to discharge from employment.

Claimant received benefits of \$2,803.00 for six weeks between July 16, 2017 and August 26, 2017. Employer did participate in the fact-finding interview.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

In this case, claimant's actions were not misconduct. If anything, they were an isolated incident of poor judgment and claimant is guilty of no more than "good faith errors in judgment." 871 IAC 24.32(1)(a). Instances of poor judgment are not misconduct. *Richers v. Iowa Dept. of Job Services*, 479 N.W.2d 308 (Iowa 1991); *Kelly v. IDJS*, 386 N.W.2d 552, 555 (Iowa App. 1986). His actions were not an intentional and substantial disregard of the employer's interest, which rises to the level of willful misconduct. It is clear that claimant did not understand that part of his job duties required him to physically review the pallets that were placed on hold in order to reconcile pursuant to the hold tag accountability sheet. There was no evidence presented that

claimant was ever instructed that he was required to physically review pallets as part of that reconciliation. As such, there is no job-related misconduct and benefits are allowed. Because benefits are allowed, the issues of overpayment and chargeability are moot.

**DECISION:**

The August 2, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

---

Dawn Boucher  
Administrative Law Judge

---

Decision Dated and Mailed

db/rvs