

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STACEY M WASHINGTON
Claimant

APPEAL 21A-UI-10038-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRESTAGE FOODS OF IOWA LLC
Employer

OC: 10/25/20
Claimant: Respondent (2)

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

On April 8, 2021, Prestage Foods of Iowa, LLC (employer) filed an appeal from the April 1, 2021, reference 03, unemployment insurance decision that allowed benefits based upon the determination Stacey M. Washington (claimant) was not discharged for willful or deliberate misconduct. The parties were properly notified about the hearing held by telephone on June 24, 2021. The claimant did not respond to the hearing notice and did not participate. The employer participated through Carol McClurg, Benefits and Compensation Supervisor. The employer's Exhibits 1 through 3 were admitted into the record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived and charged to the employer's account?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Production Team Member beginning on October 7, 2019, and was separated from employment on September 21, 2020, when he was discharged. The employer has a policy prohibiting the abuse and mishandling of the live animals it uses in its business. The employer's practice is to terminate the employment of any individual who engages in egregious or deliberate violation of that policy. The claimant received a copy of the employer's policies.

On September 17, the claimant was unloading live hogs from a truck into the employer's facility. He failed to install the sides on the ramp to prevent injury to the animals. While he was unloading the animals, three hogs fell from the ramp and had to be euthanized. After the first animal fell, the claimant did not attempt to prevent injury or harm to the other animals. The claimant was discharged for egregious violation of the employer's policy.

The administrative record shows the claimant has not received any unemployment insurance benefits since filing his claim effective October 25, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 of misconduct 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). 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).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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). 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 employer has met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The employer has an interest in and a legal duty to properly, and humanely, handle the animals it uses in its business. The claimant was aware of the employer's interests and policies related to that interest. The claimant's conduct on September 17 indicates a deliberate disregard of the employer's interests when he failed to prevent harm to the animals after realizing the potential for harm existed. The claimant's conduct is disqualifying, even without prior warning. Benefits are denied.

As the claimant has not received any benefits to date, the issues of overpayment and employer participation in the fact-finding interview are moot.

DECISION:

The April 1, 2021, reference 03, unemployment insurance decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issues of overpayment and employer participation in the fact-finding interview are moot.



Stephanie R. Callahan
Administrative Law Judge

July 6, 2021
Decision Dated and Mailed

src/kmj