

IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS

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

**KOREY KAISER**  
Claimant

**APPEAL NO. 10A-UI-02543-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BAKER ELECTRIC INC**  
Employer

**Original Claim: 01/10/10  
Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Baker Electric, Inc. (employer) appealed an unemployment insurance decision dated February 9, 2010, reference 01, which held that Korey Kaiser (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 25, 2010. The claimant participated in the hearing. The employer participated through Larry Enga, Shop Superintendent. Employer's Exhibits One and Two were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related 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 employed as a full-time electrician from October 13, 2003 through January 14, 2010. He was aware that safety violations could result in his immediate termination. The employer contracts with Cargill, and the claimant had worked at the Cargill plant since he started for over three years. Cargill had an important safety meeting on the morning of January 8, 2010 and the claimant attended was in attendance. The meeting was about working in confined spaces and the employees were taught two requirements. They could not enter a confined space without a method of retrieval and an attendant to initiate the Emergency Action Plan in the event of an emergency. Failure to comply with these safety requirements could result in serious bodily injury or death. Cargill had lost employees who ignored these safety rules.

The claimant accepted a phone call during the meeting so might not have heard everything. However, after the meeting, he signed a permit that confirmed he was aware of the required precautions and agreed to comply with them. The claimant had also been previously trained on the confined space requirements. Later that morning, a Cargill employee discovered the

claimant working inside a confined space in violation of the precautions and agreements on the permit. The claimant was working in a bulk bin that is used for storage of soybeans; he had no method of retrieval and no person there to assist him. Cargill discharged the claimant from working at its facility, since the claimant posed a risk to himself and others. The employer discharged the claimant from his employment due to his callous disregard for safety and a complete disrespect for basic safety practices.  
~~Safety procedures — Cargill plant — going into confined space — same day went to a meeting about that and signed a paper — Cargill —  
Failure to follow safety procedures — subject to term — 1/8  
No spotter~~

The claimant filed a claim for unemployment insurance benefits effective January 10, 2010 and has received benefits after the separation from employment.

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

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on January 14, 2010 for a major safety violation when he failed to comply with the requirements of working in a confined space. Since violation of this particular policy could result in serious bodily injury or death, violations result in immediate discharge and this fact is clearly communicated to all employees. The claimant admitted he violated the safety rules but explains that he was on the phone during the training session that morning and did not know what he signed when he signed the permit saying he would comply with those safety rules. Even though the claimant's conduct was an isolated incident, his actions demonstrate a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

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Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated February 9, 2010, 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 been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw