

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SALVADOR J CONTRERAS**

Claimant

**APPEAL NO. 12A-UI-09380-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COUNCIL BLUFFS PAYROLL COMPANY**

Employer

**OC: 05/20/12**

**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Council Bluffs Payroll Company (ConAgra) filed a timely appeal from an unemployment insurance decision dated July 25, 2012, reference 01, that allowed benefits to Salvador J. Contreras. After due notice was issued, a telephone hearing was held August 28, 2012, with Human Resources Generalist Anne Holoch participating for the employer. Employer Exhibits 1 through 9 were admitted into evidence. Although the claimant had provided a telephone number at which he could be contacted, the number was answered by a recording at the time of the hearing. The administrative law judge left a message both in English and in Spanish instructing Mr. Contreras to contact the Appeals Bureau while the hearing was in progress if he wished to participate. There was no further contact from the claimant. The administrative law judge takes official notice of Agency benefit payment records.

**ISSUE:**

Was the claimant discharged for misconduct in connection with the employment?

**FINDINGS OF FACT:**

Salvador J. Contreras was employed by ConAgra from October 3, 2005, until he was discharged June 28, 2012. He last worked as a forklift operator. On June 28, Mr. Contreras was operating a forklift when he ran over the toes of a coworker. Although the coworker was not seriously injured, due to steel-toed boots, Mr. Contreras was not operating the forklift in a safe manner. In reaching the decision to discharge Mr. Contreras, the company considered several prior warnings, suspensions, and last chance agreements. Mr. Contreras has received unemployment insurance benefits since filing an additional claim during the week of July 1, 2012.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does.

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 employer has the burden of proof. See Iowa Code section 96.6-2. The employer's testimony and exhibits are the only evidence in the administrative law judge's record. While the final incident in itself would not have been serious enough to warrant disqualification for benefits, it does establish carelessness on the part of the claimant. When this incident is viewed in the context of repeated prior discipline, the record as a whole is sufficient to establish misconduct. Benefits are withheld.

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 question of whether the claimant must repay the benefits he has received is remanded to the Unemployment Insurance Services Division.

**DECISION:**

The unemployment insurance decision dated July 25, 2012, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The question of repayment of benefits is remanded.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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