IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

AARON M HILTABIDLE Claimant **HORMEL FOODS CORPORATION** Employer	**APPEAL 18A-UI-03939-SC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/25/18** **Claimant: Respondent (1)**

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:

Hormel Foods Corporation (employer) filed an appeal from the March 23, 2018, reference 01, unemployment insurance decision that allowed benefits based upon the determination Aaron M. Hiltabidle (claimant) was discharged for unsatisfactory work which is not disqualifying misconduct. The parties were properly notified about the hearing. A telephone hearing was held on April 23, 2018. The claimant participated. The employer participated through Human Resource Manager Elvia Rodriguez and was represented by Robin Moore of Employers Unity. The Employer's Exhibit 1 was admitted without objection. The administrative law judge took official notice of the administrative record, specifically the fact-finding documents.

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?

Can 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: The claimant was employed full-time as a Pre-Break Miscellaneous Nights Machine Operator beginning on April 11, 2012, and was separated from employment on February 28, 2018, when he was discharged. The employer and employees' union have negotiated a Collective Bargaining Agreement (CBA) which states after three disciplinary actions in a 12-month period, an employee may be subject to discharge. The employer ranks infractions from Group I, the most serious infractions, to Group IV, the least serious infractions. A Group I infraction will lead to discharge after a first offense. A Group IV infraction results in a written warning for the first offense, a written warning for the second offense, a second written warning and five-day suspension for the third offense, and discharge for the fourth offense.

The claimant was responsible for cleaning, installing, and inspecting the star blade holder and cut plate before each break during his shift. On August 25, 2017, the claimant received a disciplinary action notice, specifically a written warning, as he failed to notify his supervisor about possible foreign material in the food product that damaged the blade holder and cut plate. On August 2, 2017, the claimant was placed on a five-day suspension and issued a second notice due to reaching two points in the attendance policy. He was told if he reached zero points, he would be subject to discharge. On January 22, 2018, the claimant received another second notice and five-day suspension for a Group II first offense when he did not properly scan product and worked with product that had been placed on hold. He was told at that time that any other issues would lead to his discharge.

On February 22, 2018, the claimant cleaned and inspected the star blade and cut plate before break. When he tried to reinstall the parts, he had difficulty with the cut plate. He believed after working on it that he had successfully reinstalled the cut plate and did not notify the supervisor of the issues he had. When he went back to clean, inspect, and install the parts before the second break of the shift, he determined the blade needed to be replaced. He notified the mechanic who discovered wear marks on the blade, indicating that metal had rubbed against metal and potentially introduced foreign matter into the product. The claimant notified his supervisor and they determined that 15 vats and 13 batches of product had been affected.

On February 23, 2018, the claimant was issued a disciplinary action, specifically a second written notice and five-day suspension, for a Group IV offense for "[f]ailure to perform satisfactory work or failure to maintain efficient production." (Exhibit 1) The claimant returned from his five-day suspension on February 28, 2018 and was discharged for the incident that occurred on February 22, 2018.

The administrative record reflects that claimant has received unemployment benefits in the amount of $2,275.00, since filing a claim with an effective date of February 25, 2018, for the eight weeks ending April 21, 2018. The administrative record also establishes that the 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 from employment for no disqualifying reason. Benefits are allowed.

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:

> (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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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 conduct for which the claimant was discharged was an isolated incident of poor judgment and, as the employer had not previously warned the claimant about this particular issue leading to the separation, it has not 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. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The prior warnings the employer issued are not for incidents similar enough to the final incident to put the claimant on notice of specific changes needed to preserve his employment. The employer's

simple accrual of a certain number of warnings counting towards discharge does not establish repeated negligence or deliberation and is not dispositive of the issue of misconduct for the purpose of determining eligibility for unemployment insurance benefits.

As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

DECISION:

The March 23, 2018, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

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Stephanie R. Callahan
Administrative Law Judge

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Decision Dated and Mailed

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