

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**ALEXANDRE B GALTEHNENKO  
PO BOX 1144  
POSTVILLE IA 52162**

**AGRIPROCESSORS INC  
PO BOX 920  
POSTVILLE IA 52162**

**Appeal Number: 04A-UI-00463-H2T  
OC 12-07-03 R 04  
Claimant: Respondent (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 9, 2004, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on February 6, 2004. The claimant did participate through the interpretation of Olga Sparks. The employer did participate through Elizabeth Billmeyer, Human Resources Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a truck driver and night yardman full time beginning February 20, 2001 through December 2, 2003 when he was discharged. The claimant was working days as

a truck driver when he was asked to also work part time in the yard at night moving trucks. The claimant worked beginning at 9:00 p.m. until the job was completed, or until 5:30 a.m., whichever came first. On the night of November 25, 2003, the claimant was recorded leaving the premises at 2:15 a.m. by the company routine security surveillance tape. The claimant did not return onto the company premises that evening. The log that he filled out indicated that he had moved his last truck in the yard at 5:15 a.m. On the evening of November 26, 2003, the claimant was again recorded leaving company premises at 1:08 a.m. and not returning. The log he filled out for that evening indicated that he had moved his last truck in the yard at 5:20 a.m. During a routine viewing of security surveillance tapes the employer discovered the discrepancy in the video and the claimant's log sheets. The claimant was placed on suspension while an investigation was conducted. During the investigation the employer discovered that on November 4, 2003 the claimant filled out paperwork to indicate he worked in the yard moving trucks from 9:00 p.m. until 5:30 a.m. on November 5, 2003. Security officers who are at the front of the company's premises complete a rendering log which records when a driver comes on to the premises, when the driver leaves the premises with a load, and when a driver returns to the premises after delivering a load. The rendering log for November 5, 2003 records that the claimant arrived at the premises to pick up a load at 4:15 a.m. This clearly conflicts with the information the claimant had filled out on his yard log records in which he states he was in the yard until 5:30 a.m.

The claimant was getting paid for working hours in the yard when he was clearly not there or was performing other duties, such as his truck driving responsibilities, for which he was paid separately. The claimant falsified company records to indicate he was working in the yard when clearly he was not. No company personnel, including John Bricker, ever told the claimant to indicate he was in the yard until 5:30 a.m. If it were true that John Bricker had told the claimant to fill out 5:30 a.m. every day on his paperwork, then why on some dates did the claimant indicate that he was finished in the yard prior to 5:30 a.m.? When the claimant's falsification of records, including his time records was discovered he was discharged. The claimant had previously worked days in the yard and knew that he would only be paid for hours worked.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

#### 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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's rights by failing to accurately and honestly fill out the paperwork required by the employer. The claimant falsified time records in an effort to be paid for hours not worked. The claimant's disregard of the employer's rights and interests is misconduct. Falsification of records constitutes disqualifying misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits. Benefits are denied.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The January 9, 2004, reference 02, 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 claimant is overpaid benefits in the amount of \$2,576.00.

tkh/b