

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ISAIAS HERNANDEZ CARDONA
Claimant

APPEAL NO: 18A-UI-08978-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SMITHFIELD FRESH MEATS CORP
Employer

OC: 07/29/18
Claimant: Respondent (2)

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 August 16, 2018, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 13, 2018. The claimant participated in the hearing with CTS Language Link Interpreter Rose (10541). Becky Jacobson, Human Resources Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Smithfield Fresh Meats Corporation from February 5, 2004 to July 24, 2018. He was discharged for falsification of documents and dishonesty.

On June 26, 2018, the claimant requested a leave of absence because his mother was severely ill in Guatemala. He asked for June 27 through July 9, 2018, off and the employer granted his request and told him if his mother passed away he needed to contact the employer immediately to discuss funeral leave and the claimant agreed. On June 27, 2018, the claimant learned his mother died when he was at the airport in Houston. He did not notify the employer of his mother's death. On July 10, 2018, the employer received a fax from the claimant stating his mother was still sick and he needed additional time off. He said he would return to work July 17, 2018. When the claimant went back to work, the employer learned of his mother's death June 27, 2018. The claimant stated he could not return to work earlier because his wife had high blood pressure and had been hospitalized in Guatemala but he did not provide any documentation supporting that claim. He said the translator made an error when she sent the fax July 10, 2018, saying his mother was still ill. During the course of the investigation, the claimant provided the employer a written statement saying he extended his leave of absence because he has eight brothers and needed to divide his mother's land and meet with attorneys

and notaries. After reviewing the available information, the employer terminated the claimant's employment for falsification of documents and dishonesty in connection with his leave of absence.

The claimant has claimed and received unemployment insurance benefits in the amount of \$934.00 for the two weeks ending September 1, 2018.

The employer did participate in the fact-finding interview within the meaning of the law. The employer submitted written documentation prior to the fact-finding interview and provided the name and phone number of a contact for further questions, clarification and rebuttal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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 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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant did not disclose to the employer that his mother died June 27 and sent a false fax stating she was still ill and he needed additional time July 10, 2018. He then told the employer he could not return because of his wife's blood pressure and hospitalization but did not provide any documentation supporting that claim and gave the employer a written statement stating he had to remain in Guatemala because he needed to divide his mother's land between his eight brothers.

The claimant willfully failed to tell the employer his mother died the day after he started his leave of absence because that would have lessened the time off he was allowed. He also intentionally caused the fax, stating his mother's condition worsened, to be sent to the employer, which was also untrue. One incident may have been a misunderstanding but in this case there were at least two dishonest statements made to the employer by the claimant.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if un rebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and

information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

The employer participated in the fact-finding interview within the meaning of the law. It provided written documentation of the situation, including the claimant's mother's death certificate, the fax he sent requesting more time and the leave of absence paperwork. It also provided the name and phone number of a representative to contact with further questions, clarifications or rebuttal.

Consequently, the claimant's overpayment of benefits cannot be waived and he is overpaid benefits in the amount of \$934.00 for the two weeks ending September 1, 2018.

DECISION:

The August 16, 2018, reference 01, 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 has received benefits but was not eligible for those benefits. The employer participated in the fact-finding interview within the meaning of the law. Therefore, the claimant is overpaid benefits in the amount of \$934.00 for the two weeks ending September 1, 2018.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn