

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**PERRY M KUHN**  
Claimant

**HORMEL FOODS CORPORATION**  
Employer

**APPEAL 17R-UI-09013-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/21/17**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 22, 2017, (reference 01) unemployment insurance decision that denied benefits based upon his discharge for wanton carelessness. A hearing on the matter was originally held on July 13, 2017 in appeal number 17A-UI-06520-S1-T. Following that hearing, Administrative Law Judge Beth Scheetz reversed the fact-finding decision, finding in favor of the claimant. The employer subsequently appealed the decision to the Employment Appeal Board, who remanded the matter for a new hearing to allow the employer to further develop the record. A telephone hearing was scheduled for October 6, 2017. The parties were properly notified of the hearing. Prior to the date of the scheduled hearing the employer submitted written notification that it no longer wished to participate in the appeals process. Because the EAB did not vacate the original appeal decision number 17A-UI-06520-S1-T, that hearing record is adopted and incorporated herein.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer has indicated, in writing, that it no longer wishes to participate in the appeal process. The Employment Appeal Board's decision, dated August 31, 2017, remanding the matter for a new hearing made clear its reasons for doing so were to allow the employer to further develop the record, something the employer has indicated it no longer wishes to do. Inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's findings of fact in appeal number 17A-UI-06520-S1-T are hereby adopted and incorporated herein as the findings of fact for appeal number 17R-UI-09013-NM-T.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the

administrative law judge's reasoning and conclusions of law in appeal number 17A-UI-06520-S1-T are hereby adopted and incorporated herein as the reasoning and conclusions of law for appeal number 17R-UI-09013-NM-T.

Iowa Admin. Code r. 871-26.8(1) provides:

- (1) An appeal may be withdrawn at any time prior to the issuance of a decision upon the request of the appellant and with the approval of an administrative law judge or the manager or chief administrative law judge of the appeals bureau. Requests for withdrawal may be made in writing or orally, provided the oral request is tape-recorded by the presiding officer.

An appeal may be dismissed upon the request of a party or in the agency's discretion when the issue or issues on appeal have been resolved in the appellant's favor.

On August 31, 2017, the Employment Appeal Board issued a decision on the employer's appeal of the decision in 17A-UI-06520-S1-T remanding the matter for a new hearing. The claimant, being the appellant of record for appeal number 17R-UI-09013-NM-T, is the only party who may withdraw the appeal. However, the Employment Appeal Board's decision made clear that the basis for their remand was to allow the employer to further develop the record. As the employer had indicated it no longer wishes to submit additional evidence, further development of the record is no longer necessary. Accordingly, the administrative law judge's reasoning and conclusions of law in appeal number 17A-UI-06520-S1-T are adopted and incorporated.

**DECISION:**

The decision of the representative dated June 22, 2017 (reference 01) is reversed. Inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's decision in appeal number 17A-UI-06520-S1-T is hereby adopted and incorporated herein as the decision for appeal number 17R-UI-09013-NM-T. Benefits are allowed, provided the claimant is otherwise eligible.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/scn