

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

STEPHEN KIMBALL
Claimant

WEITZ AGRICULTURAL LLC
Employer

APPEAL NO. 14A-UI-10573-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/14/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)(a) – Discharge for Misconduct
Iowa Code § 96.3(7) – Overpayment of Benefits

STATEMENT OF THE CASE:

Weitz Agricultural, LLC (employer) appealed an unemployment insurance decision dated September 30, 2014, (reference 01), which held that Stephen Kimball (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 30, 2014. The claimant participated in the hearing. The employer participated through Chad Sailors, Human Resources Generalist.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time materials/supply chain manager from November 18, 2013, through September 12, 2014, when he was discharged after his crew complained about him. It was raining on September 12, 2014, and the claimant made the statement to his crew that, "We work in the rain." The employees were in the warehouse when the statement was made. Human Resources Generalist Chad Sailors testified the claimant was discharged for repeated threatening and disrespectful behavior towards his employees, although he did not personally witness any of the incidents that led to the termination.

The claimant filed a claim for unemployment insurance benefits effective September 30, 2014, and has received benefits after the separation from employment in the amount of \$2,569.00. Rebecca Soulakham of Thomas and Thorngren was called for the fact-finding interview on behalf of the employer and she stated she had no information to provide. She said that she requested information from the employer but it had not been provided to her.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The employer discharged the claimant for threatening and disrespectful behavior towards his crew. However, the employer failed to present detailed information and only provided hearsay evidence. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer failed to meet its burden. Work-connected misconduct has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated September 30, 2014, (reference 01), is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css