

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SERGIO D LEON**  
Claimant

**SMITHFIELD FRESH MEATS CORP**  
Employer

**APPEAL 22A-UI-01262-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/31/21**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge from Employment  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation in Fact-Finding

**STATEMENT OF THE CASE:**

On December 13, 2021, employer Smithfield Fresh Meats Corporation filed an appeal from the December 2, 2021 (reference 02) unemployment insurance decision that allowed benefits after a separation from employment. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Friday, February 4, 2022. The claimant, Sergio D. Leon did not call in for the hearing and did not participate. The employer, Smithfield Fresh Meats Corporation, participated through Abbey Lansink, Associate Human Resources Manager. Employer's Exhibits 1 and 2 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

**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: Claimant began working for Smithfield Fresh Meats Corporation on August 31, 2021. He worked full-time hours for the employer as a production worker. Claimant's employment ended on October 11, 2021, when he was discharged for inappropriate behavior toward coworkers.

On October 5, claimant approached another employee, got in the employee's face, and put up his fists as though he intended to fight the employee. The employee reported this incident to the supervisor, who reported the incident to Lansink. The supervisor also reported a second recent incident involving claimant, in which the claimant began swearing at a coworker while on the production line.

Lansink called the claimant into the office to inquire about the incidents. Claimant's main concern was that the other employees involved went to the supervisor with their issues instead of approaching him directly. Lansink then interviewed the other employees involved the incidents, and she found their accounts credible.

Based on the interviews Lansink conducted and the other information gathered, the employer determined that claimant would be discharged from employment. Lansink explained that claimant was in his probationary period, which is why he was discharged and not given a lesser penalty. Had he been through his probationary period, he would have only been suspended for the incidents.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Iowa Code § 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.

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). 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).

Iowa Admin. Code r. 871-24.32(5) provides:

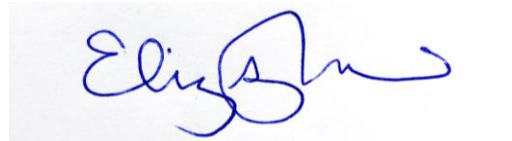
(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

In this case, the employer has established through credible evidence that claimant engaged in inappropriate behavior toward his coworkers. However, the employer treated claimant, as a probationary employee, differently than it would have treated a non-probationary employee who engaged in similar conduct. Lansink testified that while claimant was discharged for this conduct, a non-probationary employee would only have been suspended. This disparate treatment for similar behavior cannot support a disqualification for benefits. Therefore, the administrative law judge concludes that benefits are allowed, provided the claimant is otherwise eligible.

The issues of overpayment, repayment, and chargeability are moot at this time.

**DECISION:**

The December 2, 2021 (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot at this time.



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Elizabeth A. Johnson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

February 22, 2022  
Decision Dated and Mailed

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