IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

FLOYD RODGERS Claimant **ARCHER-DANIELS-MIDLAND CO** Employer	**APPEAL 21A-UI-22224-AR-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/08/21** **Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871—24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer, Archer-Daniels-Midland Co., filed an appeal from the September 22, 2021, (reference 01) unemployment insurance decision that allowed benefits based upon the determination that the employer discharged the claimant, Floyd Rodgers, but not for disqualifying misconduct. The parties were properly notified of the hearing. A telephone hearing was held on November 30, 2021. The claimant participated personally. The employer participated through Michael Kuntz. 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 was employed full time as a maintenance trainee I from March 25, 2019, until this employment ended on August 12, 2021, when he was discharged.

On August 9, 2021, claimant and a coworker were notified that a conveyor was malfunctioning. They were told to go assess what was wrong and fix it if possible. When they arrived, they saw a chain had slipped off the mechanism. Claimant took the guard off and his coworker replaced the chain. They did not follow the employer's "lock out/tag out" (LOTO) procedure, which requires that any such equipment be shut down, locked, and tagged out before maintenance. The employer identified the LOTO procedure as one of its "cardinal rules," violations of which can result in discipline up to and including discharge.

Claimant did not know that the LOTO procedure was one of the employer's cardinal rules, or that a violation of the procedure could result in his discharge. He admitted to failing to employ the LOTO procedure on August 9, 2021, but stated that it was a mistake due to an error in judgment. The employer conducted an investigation that included interviews with claimant and the coworker over the next two days. Because one of its cardinal rules had been violated, it determined that claimant's employment would be terminated. Kuntz delivered the termination decision to claimant in a meeting on August 12, 2021.

Claimant had not received a prior disciplinary warning of any kind during his employment, though he had received training on the LOTO procedure

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The conduct for which claimant was discharged was merely an isolated incident of poor judgment. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

Claimant had not received prior warnings about the LOTO procedure. He credibly testified that his violation of this procedure was an isolated incident of poor judgment, for which the consequences were not clear. Though the policy is unquestionably important, because it is meant to ensure the safety of the employer's employees, claimant had not received any prior warnings and was not aware that a single violation of the LOTO policy could result in discharge. The employer has not demonstrated that the claimant willfully disregarded its policies despite prior warnings, or that he engaged in conduct so egregious as to result in misconduct without prior warning. Benefits are allowed, provided claimant is otherwise eligible.

Because the separation is not disqualifying, the issues of overpayment, repayment, and chargeability are moot at this time.

DECISION:

The September 22, 2021, (reference 01) 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.

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Alexis D. Rowe
Administrative Law Judge

January 5, 2022
Decision Dated and Mailed

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