

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL L CUPPS**

Claimant

**APPEAL NO. 08A-UI-08424-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS**

Employer

**OC: 08/24/08 R: 04  
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

West Liberty Foods filed an appeal from a representative's decision dated September 12, 2008, reference 01, which held that no disqualification would be imposed regarding Michael Cupps' separation from employment. After due notice was issued, a hearing was held by telephone on October 7, 2008. Mr. Cupps participated personally. The employer participated by Jean Spiesz, Human Resources Manager. Exhibits One and Two were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Cupps was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Cupps was employed by West Liberty Foods from October 8, 2007 until August 22, 2008. He worked full time as a slice technician. He was injured at work on August 18. He sustained a cut to his chin and a chipped tooth. He initially refused medical attention and attempted to simply bandage his injury. However, he later opted for medical care.

Mr. Cupps first saw a dentist concerning his chipped tooth. The visit with the dentist was approximately five hours after the injury. After he left the dentist's office, he proceeded to Henry County Health Center for medical care for the laceration on his chin. He was notified that he would have to undergo a drug screening as a result of his work-related injury. The employer's written policy, a copy of which had been provided to Mr. Cupps, requires drug screening after an individual is injured at work.

On August 21, the employer was notified by Dr. Brian Heinen that the urine sample submitted by Mr. Cupps for the drug screen had been adulterated. The doctor's report indicated that no testing was performed because the specimen had been substituted. Under the employer's

policy, if it is found that an individual has engaged in conduct that obstructs or impairs the testing process, the individual is deemed to have refused to submit to testing. Because Mr. Cupps submitted an adulterated specimen for testing, he was considered to have refused testing. As a result, he was discharged from the employment. The above matter was the sole reason for the separation.

Mr. Cupps filed a claim for job insurance benefits effective August 24, 2008. He has received a total of \$2,250.00 in benefits since filing the claim.

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

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Cupps was discharged because of his failure to cooperate in drug screening. The screening was required because of his involvement in an accident at work. As such, the screening was authorized by Iowa Code section 730.5(8)f. Mr. Cupps gave a specimen for testing that was later determined to contain something other than or in addition to urine.

The employer had a vested interest in maintaining a drug-free workplace, especially in light of the dangerous equipment present in a food processing facility. An employer is hampered in its ability to make sure employees are not at work under the influence of drugs or alcohol if employees will not cooperate in the screening process. Mr. Cupps knew or should have known that his failure to provide an unadulterated urine specimen was contrary to the employer's expectations. The employer was under no obligation to give him notice of the right to have a split of his original specimen tested. The employer is only under this obligation if there is a confirmed positive drug test. Since Mr. Cupps did not cooperate in the screening process, there was no confirmed positive test result.

For the reasons stated herein, the administrative law judge concludes that substantial misconduct has been established by the evidence. Accordingly, benefits are denied. Mr. Cupps has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If an overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. Benefits will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Mr. Cupps will be required to repay benefits already received.

#### **DECISION:**

The representative's decision dated September 12, 2008, reference 01, is hereby reversed. Mr. Cupps was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of

eligibility. This matter is remanded to Claims to determine if Mr. Cupps will be required to repay benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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