

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SERGIO VILLALOBOS**  
Claimant

**APPEAL NO: 19A-UI-01322-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HORMEL FOODS CORPORATION**  
Employer

**OC: 11/11/18**

**Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge  
Iowa Code § 96.3(7) – Benefit Overpayment

**STATEMENT OF THE CASE:**

Hormel Foods Corporation, the employer, filed a timely appeal from a representative's unemployment insurance decision dated February 6, 2019, (reference 05) which held claimant eligible for unemployment insurance benefits, finding that the claimant was dismissed from work on January 11, 2019 for excessive absences but finding that the absences were due to illness and were properly reported. After due notice was provided, a telephone hearing was held on February 28, 2019. Although duly notified, claimant did not participate. Employer participated by Mr. Todd Richardson Hearing Representative and witnesses Ms. Erin Montgomery and Ms. Kellie Langdon. Employer's Exhibits 1 through 4 and Department Exhibit D-1 were admitted into the hearing record.

**ISSUES:**

The first issue is whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

The second issue is whether the claimant has been overpaid job insurance benefits.

The third issue is if the claimant has been overpaid unemployment insurance benefits, is the claimant liable to repay the overpayment or should the employer be held chargeable based upon the employer's participation in the fact-finding interview.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Sergio Villalobos was employed by Hormel Foods Corporation from December 12, 2018 until January 14, 2019, when he was discharged for failing to report or provide notification to the employer for three consecutive work days, in violation of company policy. Mr. Villalobos was employed as a full-time general worker for the company and was paid by the hour.

Mr. Villalobos was separated from his employment with Hormel Foods Corporation after he failed to report for scheduled work and provided no notification to the employer that he would be absent on January 9, 10, and 11, 2019. Established company policy and work rules, as well as

the union agreement between the company and the union, require employees to notify the company of absences each day and provide if an employee does not report for work or provide notification for three consecutive work days, they are considered to have abandoned their job and are discharged from employment. Mr. Villalobos was aware of the company rules and the bargaining agreement.

After failing to report or provide notification for three consecutive work days, January 9, 2019 through January 11, 2019, Mr. Villalobos contacted the company the following week. At that time the claimant admitted that he had not called in on the days he was absent because of domestic issues.

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

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Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

In discharge cases, the employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the Unemployment Insurance law. *Cosper v. Iowa Department of Job Service*, 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer shall constitute misconduct except for illness or other reasonable grounds for which the employee was absent and not were properly reported to the employer. Iowa Administrative Code r. 871-24.32(7). Also See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187, 190 (Iowa 1984).

In the case at hand, the evidence in the record establishes that Mr. Villalobos was separated from his employment with Hormel Foods Corporation after he failed to report for scheduled work and provided no notification to the employer of his impending absences for three consecutive work days, in violation of an established company rule and policy. Claimant later admitted that he had not provided notification and had not reported to work because of personal issues of a domestic nature.

No aspect of the contract of employment is more basic than the right of the employer to expect employees to appear for work on the day and hour agreed upon, or in the alternative to provide reasonable and adequate notice to the employer of the reason for the non-attendance. The failure to do so shows a willful disregard of the employer's interests and standards of behavior that the employer has a reasonable right to expect of its employees under the provisions of the Iowa Employment Security law and constitutes work-connected misconduct. Accordingly, Mr. Villalobos is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects that the claimant has received unemployment insurance benefits in the amount of \$2,330.00 since filing a claim

with an effective of November 11, 2018 for the benefit weeks ending January 26, 2019 through February 23, 2019. The hearing record also establishes that the employer did participate in the fact-finding interview.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

**DECISION:**

The representative's unemployment insurance decision dated February 6, 2019, reference 05 is reversed. Claimant was discharged for work-connected misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. Claimant has been overpaid unemployment insurance benefits in the amount of \$2,330.00 and is liable to repay that amount. The employer's account shall not be charged based upon the employer's participation in the fact-finding interview.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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