

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL OHLOFF

Claimant

APPEAL NO: 08A-UI-09358-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRAIRIE AGRI ENTERPRISES INC

Employer

**OC: 09-14-08 R: 04
Claimant: Respondent (2R)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 9, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 29, 2008. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Greg Kimber, Office Manager and Robert Deering, Vice-President, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as full-time general manager for Prairie Agri Enterprises from May 2005 to August 29, 2008. On June 30, 2008, the claimant was told to hedge 130,000 bushels of corn because it was the end of the employer's fiscal year and the employer's CPA indicated the employer was at risk for that amount. The CPA instructed the claimant to hedge the corn because the numbers had to be reported to state offices "which would be deeply concerned over the company's financial stability with this much risk" (Employer's Exhibit One). It was imperative that it be hedged June 30, 2008, so it would fall within the correct year. The claimant was told it needed to be done at 8:00 a.m. June 30, 2008. Rather than doing it when the market opened and hedges were still available, he waited until 11:30 a.m. when the market went limit down to tell Office Manager Greg Kimber that he was leaving for the day and Mr. Kimber should talk to the CPA to find a way to cover that risk because the market was now limit down and they could no longer purchase any hedges. To cover the risk the employer was forced to buy 100,000 bushels of corn at \$1.24 under the market price. If the claimant had done what he was instructed to do the employer would have saved \$157,500.00 on their purchase and made \$642,075.00. On June 3, 2008, a customer delivered two semi-truck loads of soybeans to the employer to be sold and loaded on the employer's trailers. The customer priced them earlier in the year for the employer to pick up in May 2008. The claimant had one load delivered to

Wisconsin July 15, 2008, but allowed the other load to sit on the trailer until August 21, 2008, when the employer had a driver available and willing to take the load July 16, 2008, but was told by the claimant to wait because the price had dropped. Iowa Grain Dealers law chapter 542.8 states "a grain dealer shall pay for grain upon delivery or demand, but no later than 30 days after delivery" (Employer's Exhibit's One and Two). The claimant made the payment for the second load August 28, 2008, which was 49 days after delivery. Because of the claimant's actions the employer's grain dealer license could have been suspended or revoked. The employer terminated the claimant's employment August 29, 2008.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

871 IAC 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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). At the time of hire the claimant indicated he was knowledgeable about the laws, rules and procedures governing the employer's business. Despite that fact, however, the claimant cost the employer several hundreds of thousands of

dollars due to his failure to hedge 130,000 bushels of corn June 30, 2008, as instructed by the CPA. Rather than hedge the corn when the market opened that day he waited until the market went limit down and then effectively told Mr. Kimber to take care of the problem and left at 11:30 a.m. The claimant also violated the law and put the employer's grain dealer license in jeopardy by failing to pay for grain from a customer for 49 days, as opposed to 30 days as required. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The October 9, 2008, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs