

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY M MOTYKOWSKI

Claimant

APPEAL NO. 08A-UI-03252-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

**OC: 02/10/08 R: 03
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (Cargill) filed an appeal from a representative's decision dated March 19, 2008, reference 04, which held that no disqualification would be imposed regarding Gary Motykowski's separation from employment. After due notice was issued, a hearing was held by telephone on April 17, 2008. The employer participated by Lauri Elliott, Assistant Human Resources Manager. Exhibits One, Two, and Three were admitted on the employer's behalf. Mr. Motykowski did not respond to the notice of hearing.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Motykowski was employed by Cargill from March 6, 2007 until February 5, 2008. He worked full time as a livestock handler. On February 4, he was told by his supervisor not to shoot the "downer" hogs until after break. The term "downer" refers to those hogs that cannot walk or cannot get off the truck. The supervisor apparently wanted to wait to see if the hogs would move on their own. Instead of waiting as directed, Mr. Motykowski shot the hogs before break. When questioned, he could offer no explanation for disregarding the instructions given by the supervisor.

The employer has United States Department of Agriculture (USDA) inspectors on site. Violations of animal handling standards could result in the employer's operations being shut down by USDA. In making the decision to discharge, the employer also considered the fact that Mr. Motykowski had received a verbal warning on January 9, 2008. He was tattooing hogs on the wrong side and was told several times to place the tattoo on the correct side. He was given the verbal warning after he continued to tattoo the wrong side.

Mr. Motykowski filed a claim for job insurance benefits effective February 10, 2008. He has received a total of \$1,440.00 in benefits since filing his 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. Motykowski was discharged for disregarding a clear directive from his supervisor. He was told to wait until after break before shooting "downer" hogs but shot them before break. His conduct had the potential of subjecting the employer to sanctions by the USDA. Mr. Motykowski did not participate in the hearing to establish that his actions were either in good faith or for good cause.

Mr. Motykowski's blatant disregard for the employer's standards is further evidenced by his failure to tattoo hogs on the correct side. He had been told on several occasions before the verbal warning that he was applying the tattoo on the wrong side. The fact that he had to be told more than once where to tattoo the hogs indicates a lack of concern for the proper procedures required by the employer.

After considering all of the evidence, the administrative law judge concludes that the employer has satisfied its burden of proving deliberate and intentional misconduct. Inasmuch as the misconduct was substantial, benefits are denied. Mr. Motykowski has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated March 19, 2008, reference 04, is hereby reversed. Mr. Motykowski was discharged by Cargill 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. Mr. Motykowski has been overpaid \$1,440.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs