

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHANIEL WREH
Claimant

APPEAL NO. 13A-UI-12330-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 09/29/13
Claimant: Respondent (2)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Swift Pork Company (employer) appealed an unemployment insurance decision dated October 23, 2013, reference 01, which held that Nathaniel Wreh (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 25, 2013. The provided a telephone number but was not available when that number was called for the hearing, and therefore, did not participate. The employer participated through Luis Meza, Human Resources Supervisor.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time production worker from December 5, 2011 through October 3, 2013 when he was discharged for gross misconduct and horseplay. His job and many of his co-worker's jobs involve the use of sharp knives but employees are only allowed to use their knives for work. On September 25, 2013, co-worker Walter Martinez used his knife to tap the claimant on his hat. The claimant responded by swinging his knife towards Mr. Martinez, who stepped back but the claimant sliced the co-worker's apron. The claimant was suspended that day and subsequently discharged.

The claimant filed a claim for unemployment insurance benefits effective September 29, 2013 and has received benefits after the separation from employment in the amount of \$2,856.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on October 3, 2013 for assaulting a co-worker on September 25, 2013. He swung his knife towards the co-worker because he was angry the co-worker tapped his hat with a knife. Fortunately the co-worker stepped back and escaped serious injury or the knife would have cut more than his apron. The claimant's actions are egregious and potentially criminal. The employer has a duty to provide a safe workplace for its employees and the claimant's inability to control his temper threatened the employer's ability to do that. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

In the case herein, the benefits were not received due to fraud or willful misrepresentation and the employer witness did not personally participate in the fact-finding interview. However, the employer representative sent in detailed written documentation which contained factual information regarding the reasons for the discharge. In accordance with the Agency definition of participation, the employer participated in the fact-finding interview and its account is not subject to charge. See 871 IAC 24.10. Consequently, a waiver cannot be considered and the claimant is responsible for repaying the overpayment amount of \$2,856.00.

DECISION:

The unemployment insurance decision dated October 23, 2013, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid in the amount of \$2,856.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs