

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GRANT H TROXEL**

Claimant

**APPEAL NO: 07A-UI-10891-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**

Employer

**OC: 10/07/07 R: 03  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Cargill Meat Solutions Corporation (employer) appealed a representative's November 15, 2007 decision (reference 02) that concluded Grant H. Troxel (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 11, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Katie Holcomb, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on May 29, 2007. The employer hired the claimant to work as a full-time production employee. During the claimant's probation, the first 45 days of his employment, he had attendance issues. On July 26, 2007, the employer gave the claimant a final written warning for his unsatisfactory attendance. The warning informed the claimant he would be discharged if he had another absence. After the claimant received the July 26 warning, he was absent from work on July 31 and August 19, 2007. In accordance with the employer's policy, the claimant should have been terminated at that time, but was not.

On August 23, 2007, the claimant reported he was having back problems to the employer's nurse. While talking to the nurse, the claimant indicated he had back problems all his life. The

employer reviewed the claimant's pre-employment physical. On this form the claimant reported he did not have any current back problems or had any chronic back problems.

The employer concluded the claimant falsified his pre-employment physical. On August 23, the employer discharged the claimant for falsifying information on his pre-employment physical form.

The claimant established a claim for unemployment insurance benefits during the week of October 7, 2007. The claimant filed claims for the weeks ending October 13 through December 8, 2007. He received his maximum weekly benefit amount of \$80.00 for each of these weeks.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the employer's testimony, the facts establish the claimant failed to inform the employer about his chronic back problems on his pre-employment physical. The evidence indicates the claimant intentionally failed to disclose his back problems when he applied to work for the employer. This conduct amounts to work-connected misconduct. Therefore, as of October 7, 2007, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending October 13 through December 8, 2007. The claimant has been overpaid \$720.00 in benefits he received for these weeks.

#### **DECISION:**

The representative's November 15, 2007 decision (reference 02) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 7, 2007. This disqualification continues until he has been paid ten times his weekly benefit amount for insured

work, provided he is otherwise eligible. The employer's account will not be charged. The claimant has been overpaid and must repay a total of \$720.00 in benefits he received for the weeks ending October 13 through December 8, 2007.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs