

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA L SUMMERS
Claimant

APPEAL NO. 07A-UI-00469-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARGILL MEAT SOLUTIONS
CORPORATION**
Employer

OC: 12/10/06 R: 03
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated January 2, 2007, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 30, 2007. Employer participated by Katie Diercks, Assistant Human Resource Manager. Claimant failed to respond to the hearing notice and did not participate.

ISSUES:

The issues in this matter are whether claimant was discharged for misconduct and is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on December 7, 2006.

Claimant was discharged on December 12, 2006 by employer because claimant physically beat a downed pig. Claimant had been trained on animal abuse. Claimant was informed that any instance of animal abuse would result in discharge.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has established that claimant was discharged for an act of misconduct when claimant violated the employer's policy concerning animal abuse. Claimant was warned concerning this policy.

The last incident, which brought about the discharge constitutes misconduct because claimant intentionally violated a known company rule knowing that discharge would result. Therefore, claimant was discharged for an act of misconduct and as such, is disqualified for the receipt of unemployment insurance benefits.

The next issue concerns an overpayment of unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge holds that claimant is overpaid unemployment insurance benefits in the amount of \$1,002.00 pursuant to Iowa Code section 96.3-7 because a decision has determined the claimant to be ineligible to receive benefits due to a discharge for misconduct. Since claimant has been disqualified for the receipt of unemployment insurance benefits, the claim shall be locked until claimant has re-qualified or is otherwise eligible.

DECISION:

The decision of the representative dated January 2, 2007, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. Claimant is overpaid unemployment insurance benefits in the amount of \$1,002.00.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs