

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOBBY L GROVES
Claimant

APPEAL NO. 14A-UI-00997-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MILLENNIUM AGRICULTURE LC
Employer

**OC: 12/29/13
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment
871 IAC 24.10 – Employer Participation

STATEMENT OF THE CASE:

The employer, Millennium Agriculture, filed an appeal from a decision dated January 17, 2014, reference 01. The decision allowed benefits to the claimant, Bobby Groves. After due notice was issued a hearing was held by telephone conference call on February 18, 2014. The claimant participated on his own behalf. The employer participated by Human Relations Manager Nancy Evermann and Swine Division Manager Jeff Monk.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Bobby Groves was employed by Millennium Agriculture from May 21, 2012 until October 22, 2013 as a full-time swing technician. The claimant had been thoroughly trained, in coursework and in hands-on work, about the bio security protocols. A hog confinement facility must take extraordinary precautions to prevent introducing diseases into the livestock area, and preventing the spread of the disease. The policy further states violation of the bio security protocols is grounds for disciplinary action up to and including discharge. The decision as to the level of disciplinary action is determined, in part, on the seriousness of the violation and any prior warnings. Mr. Groves had received a written warning on August 17, 2013, for not checking the hog feeders when he was on duty and not scraping the farrowing crates clean of manure.

The first step in the cleanliness protocol is the shower room. Employees enter the room from the outside, remove their street clothes in the “dirty” area, shower, then step out of the shower into the “clean” area where clean clothing is provided.

On October 22, 2013, the claimant was assisting Swing Division Manager Jeff Monk to move boxes and part of one foot inadvertently crossed the line over into the dirty area. Mr. Monk saw this but said nothing to Mr. Groves, and allowed him to return to work. Later in the day he

consulted with Manager Morris Timm and the decision was made to discharge the claimant for violation of the bio security protocol.

The decision to discharge was based on the fact Mr. Groves had had a prior written warning for failing in the area of "animal welfare."

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge accepts the necessity to prevent the introduction and spread of disease in the hog confinement areas. But what the employer had failed to adequately explain is why, if Mr. Monk saw the claimant inadvertently step outside the clean area, he was allowed to return to the clean area for several hours before he was fired. He was not even told to take another shower or go home until the next day.

The final act was not intentional and it is questionable whether the claimant was even aware of what he had done. The employer declined to bring it to his attention and allowed him to return to work. If the incident was egregious enough to warrant discharge the administrative law judge considers it to have been egregious enough to warrant immediate discharge or at least immediate correction such as re-showering or leaving the facility altogether.

The final incident does not rise to the level of misconduct as required by 871 IAC 24.32(8) and disqualification may not be imposed.

DECISION:

The unemployment insurance decision dated January 17, 2014, reference 01, is affirmed. Bobby Groves is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs