

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AARON ANDRESEN
Claimant

APPEAL NO: 11A-UI-03518-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARCHER-DANIELS MIDLAND CO
Employer

OC: 02-06-11
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 10, 2011, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 12 and continued April 15, 2011. The claimant participated in the hearing with Attorney Cory Walker. Bryce Albrechtsen, Human Resources Manager and Jim Woll, Plant Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Four and Claimant's Exhibits A through E were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time millwright/iron worker for Archer–Daniels–Midland from March 26, 2007 to February 8, 2011. He was discharged for falsification of medical records or reports. The claimant sustained a worker's compensation injury February 11, 2009, which resulted in three right shoulder surgeries. He was currently on light duty trying to get back to full duty. The claimant was examined by physician, Dr. Camilla Frederick, January 18, 2011, with continuing pain that did not go away. He told the physician that he was doing no activities outside of his job, "except to work on (his) computer one to two hours a night, cook supper and clean up when not at work." Dr. Frederick noted there was no shoulder movement and the claimant moved the right arm at the elbow only with minimal rotation. Dr. Frederick documented the claimant's statement: "He says he is doing absolutely nothing outside of work including snow removal-kids are doing it." The employer had captured surveillance footage of the claimant removing snow from his driveway with a snow blower December 10, 2010. The snow blower has a pull start and the claimant was recorded starting the snow blower at least two times and running it through a heavy snow. The employer's safety policies provide that intentionally falsifying any record or report subjects the employee to immediate discharge. The

claimant was discharged for falsifying his reported activities outside of work concerning his medical condition while recovering from a work-related injury

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged February 8, 2011, for violation of company policy after he provided false information about outside activities, and specifically snow removal, to a physician while recovering from a work-related medical injury. The claimant was on light duty at the time and the torque required to start a snow blower would exceed the claimant's ten-pound lifting restrictions as would his pushing the snow blower through a heavy snow. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its

burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The March 10, 2011, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css