

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JORGE SANCHEZ SOSA
Claimant

APPEAL NO. 18A-UI-00215-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE MASCHHOFFS LLC
Employer

**OC: 11/26/17
Claimant: Respondent (1R)**

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

STATEMENT OF THE CASE:

The Maschhoffs (employer) appealed a representative's December 26, 2017, decision (reference 01) that concluded Jorge Sanchez Sosa (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 26, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Taylor Kreck, Human Resources Generalist. The employer offered and Exhibit 1 was received into evidence. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on August 22, 2016, as a full-time production technician. The claimant signed for receipt of the employer's handbook on August 22, 2016. On August 2, 2017, the employer asked the claimant to provide I-9 documentation, Employment Eligibility Verification, as required by the Department of Homeland Security, United States Citizenship and Immigration Services. The claimant told the employer he did not have his updated card. The employer terminated the claimant on August 2, 2017.

The claimant filed for unemployment insurance benefits with an effective date of November 26, 2017. The employer's representative provided the name and number of Taylor Kreck as the person who would participate in the fact-finding interview on December 20, 2017. The fact finder called Ms. Kreck at the number the representative provided but "the wireless customer was not available". The employer did not call the fact-finder and try to participate in the interview. The employer provided some documents for the fact finding interview but the specific rule or policy that the claimant violated which caused the separation were illegible.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). In this case, the claimant was unable to produce required documentation. As a result the employer could not legally employ the claimant. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

While the claimant did not commit any misconduct, there is an issue about whether he is able and available for work. The issue of whether he is able and available for work is remanded for determination.

DECISION:

The representative's December 26, 2017, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible. The issue of whether he is able and available for work is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs