

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 06A-UI-02402-H2T
OC: 02-05-06 R: 01
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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 February 21, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 17, 2006. The claimant did participate. The employer did participate through Mick Koenck, Plant Manager and Steve Gerhart, Vice President of Administration and Law.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a security officer full time beginning September 11, 2003 through February 3, 2006 when he was discharged.

On January 31 when Mr. Koenck was leaving the plant at about 4:50 p.m. he noticed an orange extension cord running out of the plant through a puddle of water into the claimant's truck. He walked over to the claimant's vehicle and could see illumination inside the vehicle. As he approached the vehicle he saw the claimant reach over into the passenger side of his vehicle and do something that immediately terminated the illumination inside the car. When Mr. Koenck reached the claimant's vehicle he noted that the orange extension cord was plugged into a small television set sitting in the passenger seat. Mr. Koenck told the claimant that it was not in his job description to watch television. The claimant had started his shift at 3:00 p.m. and his first break was not scheduled to occur until 6:00 p.m. for his ten-minute break and not until 8:30 p.m. for his lunch break. The claimant was asked to disconnect the orange extension cord roll it up and return it to its proper storage space and then to report to the office. The claimant did so.

In Mr. Koenck's office, the claimant was present along with Mr. Clausen to discuss the matter of the claimant watching television in his truck while he was to be performing security duties. The claimant was suspended for the remainder of his shift while the employer continued to investigate. The claimant was off work for his regular time off on February 1 and 2. He returned to work on February 3 and another meeting was held. The claimant denied that he had been watching television on January 31 when Mr. Koenck approached his vehicle. Mr. Koenck pointed out that the vehicle was parked on the east side of a building, in the shadows at 4:50 p.m. on January 31 in Iowa and that it was dark enough out for him to see the television illuminating the inside of the claimant's vehicle. Mr. Koenck was able to see inside the claimant's vehicle as the claimant reached into the passenger seat and shut off the illuminating source, the television.

During the investigation, the employer discovered that on January 30 another supervisor, Miguel Nuno had seen the claimant run the same orange extension cord into his vehicle to power a television set. On January 30 the claimant was told by Mr. Nuno not to bring the television set to work again and not to use the orange extension cord in such a manner.

The claimant was not on a break on January 31 when Mr. Koenck observed him watching television in his vehicle. The claimant had received a copy of the employer's handbook which prohibited loafing on the job. The claimant was allowed to sit in his vehicle, but he was not allowed to run an extension cord into the vehicle to power a television set.

The claimant had been performing the security job since November 2005 since it complied with his work restrictions. He did not start bringing the television to work until late January 2006.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was told on January 30 not to bring the television to work again and not to use an extension cord to power the television. Despite being told not to, the claimant brought the television to work again the next day and was watching it during work hours. The testimony of Mr. Koenck is persuasive in that he could see the television illuminating the inside of the claimant's truck and he saw the claimant turn off the television as he approached the vehicle. The claimant was watching television while he was on the clock and not during a break. He had previously been told not to bring a television to work with him. The employer has a right to expect employees not to watch television while they are to be working. The claimant's watching television in his vehicle while on work hours constitutes disqualifying misconduct. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The February 21, 2006, 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 is overpaid benefits in the amount of \$1,083.00.

tkh/tjc