

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICK BOATRIGHT**

Claimant

**APPEAL NO: 13A-UI-08015-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PLAZA LANES PLEASANT HILL**

Employer

**OC: 06/09/13**

**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Plaza Lanes Pleasant Hill (employer) appealed an unemployment insurance decision dated June 28, 2013, reference 01, which held that Rick Boatright (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 26, 2013. The claimant participated in the hearing. The employer participated through owner Randy Thompson; General Manager Melissa Sears; Bartender Nate Delude; and Server Kiya Thompson. Employer's Exhibits One through Five were admitted into evidence.

**ISSUE:**

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

**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 employed as a part-time employee working at the front desk/snack bar from February 25, 2013 through June 13, 2013 when he was discharged for smoking marijuana on the employer's property during work hours. He was in a staff meeting on June 13, 2013 when he was approached by a customer who had come through the back door at approximately 4:30 p.m. The customer whispered in the claimant's ear and the claimant left the meeting with the customer heading out the back main doors of the bowling alley. The claimant returned ten minutes later and sat down next to employee Denise Hennick, who immediately smelled marijuana on the claimant. Bartender Nick Delude, General Manager Melissa Sears, Owner Randy Thompson and Server Kiya Thompson all smelled marijuana on the claimant. Ms. Sears wrote on a piece of paper that she could smell marijuana coming from the claimant and she handed the paper to Owner Randy Thompson. Mr. Thompson then took the claimant back to the office to ask him why he smelled like marijuana. The claimant said he does not smoke marijuana and the owner told him that was hard to believe since he smelled like it.

Subsequently, bartender Nate Delude approached the owner and told him that the claimant had just asked him if he thought co-employee Kiya “ratted” him out for smoking marijuana. The owner questioned her about it after she reported to work that evening. Kiya reported that she was sitting on the patio before work on June 12, 2013 when the claimant came out there and sat at a table. Kiya could smell burning paper and the claimant began to cough. Kiya saw that the claimant was smoking marijuana and asked him if he was. The claimant replied, “Yes, I mean, no.” The claimant then put out the joint, put it back into his pocket and went back inside. The claimant was subsequently discharged.

At the hearing, the claimant admitted he smokes marijuana but denied smoking it at work. He admitted that the person with whom he went outside with on June 13, 2013 was smoking marijuana and that was why he smelled like it.

The claimant filed a claim for unemployment insurance benefits effective June 9, 2013 and has received benefits after the separation from employment.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if he was discharged for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer’s burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

The claimant was discharged on June 13, 2013 for smoking marijuana while working on both June 12, 2013 and June 13, 2013. While he denies smoking marijuana, he admitted he stood next to someone who was smoking marijuana on the employer’s property on June 13, 2013. The preponderance of the evidence confirms the claimant smoked marijuana while working on June 12, 2013 and June 13, 2013. However, even if his denial of that fact is relied upon, he admitted he allowed or stood next to a customer who smoked marijuana on the employer’s property. The claimant’s actions were a violation of policy and detrimental to the employer’s interests. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant’s separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency’s initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated June 28, 2013, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/css