

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN J GOEDERS
Claimant

APPEAL NO. 110-UI-07638-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HORIZONS UNLIMITED OF PALO ALTO
Employer

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

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 23, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. The Employment Appeal Board had remanded the appeal for new hearing after determining the claimant had good cause for not participating in a hearing on April 20, 2011. A telephone hearing was held on July 18, 2011. The claimant participated in the hearing. Ron Askland participated in the hearing on behalf of the employer with witnesses, Pam Beschorner and Pam Satterwhite.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a site coordinator from December 1, 2009, to February 9, 2011. The employer serves mentally adult clients in a supervised community living setting to assist them with daily living skills. He was informed and understood that under the employer's policy, employees were to not to remove a client's checkbook from the apartment without the resident present because the client was supposed to participate in making purchases. He also understood that he was required to notify a supervisor regarding any absence from work.

The claimant willfully violated the employer's policy by taking a resident's checkbook from the apartment in February 2011. He planned to buy some clothes for the client on his own without the client's participation, which was also a policy violation.

On February 4, the claimant was scheduled to work until 6:00 p.m. After attending a staff meeting at the employer's main office that ended at about 2:30 p.m., the claimant failed to return to his residential site. The claimant had taken off early from work because he was salaried and had completed all of his work for the day. He did not seek or obtain permission to leave work early. One of the other employees at the site called the claimant's supervisor to find out when

the claimant was going to be back at work. The supervisor tried calling the claimant, but he was not available.

On February 5, 2011, the claimant was arrested for operating a vehicle while intoxicated. This took place while the claimant was off duty in his personal vehicle. The police found the checkbook belonging to the client in the claimant's car. The employer was notified by the police about the OWI arrest and the checkbook.

The employer discharged the claimant on February 9, 2011, for having a customer's checkbook in his car and for leaving work without permission.

The claimant filed for and received a total of \$2,730.00 in unemployment insurance benefits for the weeks between February 6 and April 16, 2011.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. I do not believe the claimant's testimony that he was never told he could not take and keep his client's checkbook. The claimant admitted he left work on February 4 without notifying his supervisor.

The claimant's violation of known policies was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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 § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated March 23, 2011, reference 01 is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw