

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VIKTOR KURTOVIC
Claimant

APPEAL NO. 13A-UI-04225-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE CBE GROUP INC
Employer

OC: 03/03/13
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 28, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 15, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. John Halverson participated in the hearing on behalf of the employer with witnesses, Mary Phillips, and Matt Beeman. Exhibits One to Seven were admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time as a debt collector for the employer from June 18, 2012, to March 4, 2013. He was informed and understood that under the employer's work rules, debt collection employees are required to inform the debtors they called that they are debt collectors attempting to collect a debt and that any information obtained will be used for debt collection purpose (so-called mini-Miranda warning). This is a requirement of the federal Fair Debt Collection Practices Act and debt collectors can be held liable for violations of this requirement.

Under the employer's discipline process, employees are subject to termination after three written warnings. The claimant received two written warnings on December 17, one for accumulating 30 points under the employer's attendance rules and one for accumulating 40 points under the attendance rules. The claimant was issued both warnings on the same day because the claimant had been absent several days in a row.

The claimant received a coaching in August 2012 about failing to provide the mini-Miranda warning to persons he spoke to. He received a verbal warning for five violations of this requirement on November 29, 2012. He was informed that further infractions could result in his termination.

Around March 1, 2013, a call the claimant made to a debtor on January 31 was monitored. The claimant again failed to give the mini-Miranda to the debtor.

As a result of the claimant's past discipline and his repeated failure to provide mini-Miranda information to debtors, the employer discharged the claimant on March 4, 2013.

The claimant filed for and received a total of \$2,333.00 in unemployment insurance benefits for the weeks between March 3 and May 18, 2013.

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 claimant's violation of a known work rule 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 28, 2013, 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/pjs