

**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 - E1**

**MICHAEL L BAGLEY  
245 PHILIP ST  
DES MOINES IA 50315**

**INTERSTATE BRANDS CORP  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166 0283**

**Appeal Number: 05A-UI-01309-DWT  
OC: 01/09/05 R: 02  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Interstate Brands Corporation (employer) appealed a representative's January 28, 2005 decision (reference 01) that concluded Michael L. Bagley (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 10, 2005. The claimant responded to the hearing notice by providing a phone number in which to contact him. When this phone number was called, a recording indicated the phone had been disconnected or was no longer in service. As of the date of this decision, the claimant has not again contacted the Appeals Section. Kelly Green, a human resource assistant, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on September 15, 2003. The claimant worked as a full-time route sales representative. Part of his job duty required him to properly stock enough product in the stores he serviced. The employer's policy informs employees that when a customer will not allow the employee into the store, the employee will be suspended until the issue with the customer is resolved.

In June or July 2004, a customer complained about continually running out of product to sell. Management talked to the customer and the claimant. The customer noticed an improvement with the amount of product the claimant delivered for a while. When the customer again started running out of product, the customer repeatedly asked the claimant for more product.

During the week ending January 1, 2005, the above customer would not allow the claimant into its store and refused the claimant's delivery. The customer would not allow the claimant to make any more deliveries because the customer ran out of the two best selling products the week before and was extremely low on other products. The customer had repeatedly asked the claimant for more product, but was not successful.

When the employer could not resolve the problem with his customer, the employer discharged the claimant on December 31, 2004. The employer discharged the claimant for repeatedly failing to properly provide enough product to a customer.

The claimant established a claim for unemployment insurance benefits during the week of January 9, 2005. The claimant filed claims for the weeks ending January 15 through February 5, 2005. He received his maximum weekly benefit amount of \$334.00 each week.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known, it was his responsibility to make sure customers were satisfied by delivering enough product to his customers. When a customer complained six months earlier that the claimant was not providing enough product, the claimant was put on notice that if he did not do his job, this customer would complain. At that time management stepped in and was able to resolve the problem. For an unknown and unexplained reason, the

claimant reverted to his "old" ways and again failed to provide enough product to the customer. Since the customer's repeated requests for more product fell on deaf ears, the customer resorted to the drastic step of refusing delivery from the claimant. Since the claimant did not participate in the hearing, the employer's testimony establishes by a preponderance of the evidence that the claimant committed work-connected misconduct. As a result, the claimant is disqualified from receiving benefits as of January 9, 2005.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits for the weeks ending January 15 through February 5, 2005. The claimant has been overpaid \$1,336.00 in benefits he received for these weeks.

**DECISION:**

The representative's January 28, 2005 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 9, 2005. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending January 15 through February 5, 2005. The claimant has been overpaid and must repay \$1,336.00 in benefits he received for these weeks.

dlw/kjf