

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOUNTHAI SAENGKEO
Claimant

APPEAL NO. 10A-UI-00038-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO
Employer

OC: 12/06/09
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Van Diest Supply Company filed an appeal from a representative's decision dated December 23, 2009, reference 01, which held that no disqualification would be imposed regarding Bounthai Saengkeo's separation from employment. After due notice was issued, a hearing was held by telephone at 11:00 a.m. on February 11, 2010. The employer participated by Clark Vold, Director of Manufacturing, and Carolyn Cross, Personnel Director. Exhibits One through Five were admitted on the employer's behalf. Mr. Saengkeo did not respond to the hearing notice until 11:41 a.m., after the hearing record was closed. Because he did not have good cause for not participating at the scheduled time, the administrative law judge declined to reopen the hearing record.

ISSUE:

At issue in this matter is whether Mr. Saengkeo was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Saengkeo was employed by Van Diest Supply Company from September 17, 2002 until December 7, 2009. He was employed full time as a production operator. He was discharged for loafing on the job. Mr. Saengkeo received a written warning on September 29, 2006 for being out of his work area. The warning recited the fact that he frequently left his work area without permission and had been verbally warned not to do so.

The decision to discharge was based on the events of December 4, 2009. On the morning of December 4, Mr. Saengkeo was directed to report to the supervisor on a different line to assist. He had worked on the new line on prior occasions and knew what work was to be performed. He left his current line at 8:15 a.m. Although he reported to the new location, he did not report to the supervisor. Instead, he stood in a corner area that was behind tanks and equipment and out of sight. Other workers on the new line who saw him as they walked by invited him to come help on the line but he declined.

Mr. Saengkeo remained out of sight until his presence was reported to other management. When other management approached, he was coming out of the locker room. He did not start working on the new line until 8:55 a.m. When questioned, Mr. Saengkeo indicated he had not been working because he was waiting to be told what to do. When asked why he did not assist when asked to do so by other workers, he indicated it was not their place to assign him work. As a result of the incident, he was discharged on December 7, 2009.

Mr. Saengkeo filed a claim for job insurance benefits effective December 6, 2009. He has received a total of \$4,020.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, the administrative law judge concludes that the employer has satisfied its burden of proof. Mr. Saengkeo hid in order to avoid work. Although he knew which supervisor he was to report to and what work he was to perform, he stood in an out-of-the way area rather than go directly to the line.

Mr. Saengkeo told the employer he was waiting to be told what to do. However, he situated himself such that the new supervisor would not have immediately known he was there unless he went looking for him. He also told the employer he did not feel other workers on the line had the authority to invite him to the line to work. These individuals were simply asking him to provide the assistance he knew he been sent over to provide. Given the fact that had worked on the new line in the past, he knew what he was to do once he arrived there. Mr. Saengkeo's conduct in simply standing around in an out-of-the-way area for 40 minutes constituted a substantial disregard of the standards he knew or should have known the employer expected of him. It is concluded that his conduct of December 4 is sufficient, standing alone, to constitute disqualifying misconduct. Accordingly, benefits are denied.

Mr. Saengkeo has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated December 23, 2009, reference 01, is hereby reversed. Mr. Saengkeo was discharged for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Saengkeo will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css