

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN YATES**  
Claimant

**APPEAL NO: 10A-UI-03958-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DILLARD'S INC**  
Employer

**OC: 02/07/10**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Dillard's, Inc. (employer) appealed an unemployment insurance decision dated March 5, 2010, reference 01, which held that John Yates (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 April 28, 2010. The claimant participated in the hearing. The employer participated through Store Manager Jason Wolff and Assistant Store Manager Lori Flahive. Employer's Exhibits One through Seven were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct?

**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 full-time employee from August 24, 2005 through February 11, 2010 when he was discharged for a repeated failure to follow directives. He was hired as a sales associate, became an assistant area manager and then an area sales manager before he became the dock manager in February 2008, which was the position he held at the time of discharge. He supervised six employees in his position as dock manager and handled general maintenance, housekeeping duties and shipping and receiving.

The claimant successfully completed all of his duties as a dock manager until October 17, 2009 when he received a written warning and was placed on 30 days of probation. He was responsible for checking incoming trailer seals and providing the payroll sheets for the dock and housekeeping associates but was not completing these tasks. Additionally, the shipping was not done daily and items were not docked and delivered daily. The employer advised the claimant he needed to improve his time management skills. A second written warning was issued on January 11, 2010 because the claimant continued to not check in trucks in the same

week. There were also serious housekeeping concerns and the claimant needed to create action plans in order to accomplish all the different tasks.

The store manager walked through the store with the claimant on January 22, 2010 and pointed out the housekeeping and maintenance issues that were not getting completed. The claimant was given a two-page email on that same date which contained the list of items needing to be done but only some of those tasks were completed. The manager met with the claimant one week later on January 29, 2010 and went through the original list documenting the tasks that had yet to be completed. The manager asked the claimant to complete the work and to inform him when it was done but advised him there would be a new list on the following Monday.

Both the store manager and the assistant store manager walked the floor with the claimant on February 1, 2010. Another email was sent to him that evening which reminded him that some of the work from the original list had still not been completed. The email directed the claimant to complete the priority items on the list before doing other work. He was advised to participate in the work and then to inspect it for 100 percent completion. A new list was provided to the claimant that had to be completed by February 8, 2010 and some of this work was still left over from the January 22, 2010 list. He was given the new deadline and advised no excuses would be accepted.

The employer sent the claimant an email on February 10, 2010 advising him of the work that was still not done. The claimant testified at the hearing that he did not have enough help and manpower to complete all the tasks but admitted he never asked management for more help and more time. He did ask a couple managers from different departments for help but was advised that was not acceptable. The claimant could have asked for more overtime for his employees but failed to do that also. He asked for some overtime but when it was not a sufficient amount of time, he failed to let the employer know. The claimant said some of the electrical work needed to be done by the store engineer but the employer testified that he counted 47 lights out on the second floor alone and this was something the claimant could have completed. The employer discharged the claimant for his poor work performance on February 11, 2010.

The claimant filed a claim for unemployment insurance benefits effective February 7, 2010 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 an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for a repeated failure to follow the employer's directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The claimant knew what was required of him and was capable of completing those duties as evidenced by the fact that he did so successfully since February 2008. He offered testimony in the hearing that he had too much work to do and did not have enough help, which is certainly a plausible explanation. However, he had been a manager for many years and if he needed more help, it was his responsibility to request it, which he admitted he did not do but offered no reasonable explanation for his failure to act. 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 March 5, 2010, 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.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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