

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**PHILIP M PICKERING**  
Claimant

**HARBOR FREIGHT TOOLS USA INC**  
Employer

**APPEAL 16A-UI-11545-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/25/16**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

Harbor Freight Tools USA, Inc. (employer) filed an appeal from the October 14, 2016 (reference 01) unemployment insurance decision that allowed benefits based upon the determination it failed to furnish sufficient evidence to show it discharged Philp M. Pickering (claimant) for disqualifying misconduct. The parties were properly notified about a hearing on November 8, 2016 with Administrative Law Judge Jeremy Peterson. The employer made a request to postpone the hearing which was granted and the hearing was rescheduled for November 17, 2016 at 1:00 p.m. On November 17, 2016 at 1:00 p.m., Judge Peterson held the hearing, but the claimant was not available at the phone number registered and did not participate. The claimant contacted the Appeals Bureau at 2:06 p.m. the same day, but the decision on the merits had already been issued. On November 21, 2016, the claimant requested the hearing record be reopened as his daughter had been in a car accident. Judge Peterson granted the claimant's request to reopen the record.

The parties were properly notified of the hearing for the reopened record on December 14, 2016 with Administrative Law Judge Stephanie Callahan. The employer requested to postpone the hearing which was granted. A hearing was held on December 29, 2016. The claimant participated personally. The employer participated through Regional Human Resources Manager Jeff Jergerian. No exhibits were offered or received into the record. Official notice was taken of the administrative record, specifically the fact-finding documents.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits?  
Can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

## **FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Store Manager beginning on May 6, 2016, and was separated from employment on September 15, 2016, when he was suspended and subsequently discharged.

The employer has a biometric timeclock that requires employees to use their fingerprints to track when they arrive and leave work. If an employee forgets to clock in or out, there is a form the employee can fill out to have the manager make an adjustment to his or her timesheet. The employee fills it out, signs it, and gives it to the manager to make the adjustment. The claimant received training on this process when he was hired and received regular email updates about the policy.

On September 2, 2016, the claimant's store was robbed. That same evening, the employee who was working with the claimant forgot to clock out. He told the claimant verbally as he was leaving that he forgot. The claimant adjusted the employee's timesheet through the computer program the following day. The claimant filled out the form, but did not obtain the employee's signature to authorize the adjustment.

During the investigation into the store robbery, the employer noticed the adjustment to the employee's time sheet without the appropriate documentation. The employer began investigating that issue and multiple employees came forward stating the claimant had changed their time sheets without permission or notice. It then reviewed the electronic records which confirmed the adjustments to the employees' time records and traced the adjustments back to the claimant. It also reviewed any forms filled out in relation to the adjustments made to determine if the employee had requested or authorized the change.

The employer discovered a total of approximately 20 instances of unauthorized time card adjustments dating back to June 2016. This resulted in some of the employees not being paid for time they had worked and the employer issued back payment to those employees. Additionally, the employer did not know exactly why all of the adjustments were made, but it appeared some of the changes were to prevent employee overtime. The claimant would move the hours worked to another day or week, so the employee would have all hours accounted for, but they would not earn the additional overtime pay. The claimant understood that not paying employees for the time they worked could be a violation of the law. The claimant was suspended September 15, 2016 and received a letter stating he had been discharged shortly thereafter.

The administrative record reflects that the claimant has received unemployment benefits in the amount of \$1,856.00, since filing a claim with an effective date of September 25, 2016, for the four weeks ending October 22, 2016. The administrative record also establishes that the employer did not participate in the fact-finding interview, make a first-hand witness available for rebuttal, or provide written documentation that, without rebuttal, would have resulted in disqualification.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits based upon wages credited from this employer's account are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa regulations define misconduct stating:

“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.

Iowa Admin. Code r. 871-24.32(1)a. This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The employer has an interest in making sure its stores are operated in a lawful manner and that its employees are paid for the hours they worked. The claimant made adjustments to employees' hours without their permission and deprived them of wages to which they were entitled. The claimant knew this could be a violation of the laws put in place to protect employees. The claimant's actions were contrary to the best interests of the employer and his subordinate employees. This is disqualifying misconduct without prior warning. Accordingly, benefits based upon wages credited from this employer's account are denied.

Because the claimant's separation was disqualifying, benefits were paid to which he was not entitled. The unemployment insurance law 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. Iowa Code § 96.7. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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. Iowa Admin. Code r. 871-24.10(1). The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-

24.10. In this case, the claimant has received benefits but was not eligible for those benefits. Since the employer did not participate in the fact-finding interview the claimant is not obligated to repay to the agency the benefits he received and the employer's account shall be charged.

**DECISION:**

The September 25, 2016 (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits based upon wages credited from this employer's account are withheld until such time as 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 claimant has been overpaid unemployment insurance benefits in the amount of \$1,856.00 and is not obligated to repay the agency those benefits. The employer did not participate in the fact-finding interview and its account shall be charged.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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