

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TYLER RUIZ**  
Claimant

**APPEAL NO. 07A-UI-02433-ET**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**JO DAVIESS WORKSHOP**  
Employer

**OC: 02-04-07 R: 04  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 2, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 27, 2007. The claimant participated in the hearing with his mother, Sheila Frizlaff. Sandra Callahan, Executive Director; Les Montgomery, Director of Business Development; Mike Bielenda, Executive Director; and Patty Virtue, Placement Coordinator, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as part-time screen printer for Jo Daviess Workshop from January 17, 2006 to February 1, 2007. The claimant has ADD and a cognitive disorder. He was discharged for failing to work to his potential and the employer's expectations. The claimant wanted a position with regular hours and, consequently, was placed at the Jo Daviess Workshop in the screen printing department. He performed fairly well until last summer when he decided he wanted another job because he wished to work with people closer to his age. The employer and the placement coordinator worked with the claimant continuously because the employer felt he was not doing the job according to his abilities, often because he was wandering around, socializing or finding other things to do besides the job he was assigned. He was not fulfilling his assignments and told Patty Virtue, Placement Coordinator, the employer did not hold him accountable for his work. Ms. Virtue explained the employer's "three strikes" policy and the claimant said the employer would not fire him but if they did he wanted another job anyway. Ms. Virtue told him he had to work to 100 percent of his ability but the claimant did not seem to take her advice seriously. On December 27, 2006, the employer issued the claimant a written warning after he failed to reclaim any of the 18 screens he was assigned between 12:30 p.m. and 2:00 p.m. The claimant signed the warning. On January 22, 2007, the employer issued the claimant a written warning for failure to complete assignments. After the second written warning the claimant told Ms. Virtue, "At least they are holding me accountable." Other employees were aware the claimant had been warned in the past and tried to help him keep on task but the claimant often ignored their attempts. The last straw for the employer came when it

gave the claimant several assignments and the claimant failed to complete any. The employer discharged the claimant February 1, 2007. The claimant indicated he no longer liked his job and was upset that the previous management team had been replaced because they were very supportive but Ms. Virtue testified they expressed concerns about the claimant's work prior to leaving as well. He also testified that he did not feel like the workshop was going to stay open so "what was the point" and admits he tried "moderately" after management changed. He stated that the employer did not "call (him) on anything to force him to be responsible and try harder."

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant does suffer from ADD and a cognitive disorder, it appears he was capable of performing the tasks assigned to him but often spent time wandering around, socializing and doing tasks other than those assigned. He was told several times

to do his assignments and while everyone associated with the workshop believed he was capable of doing what he was assigned the claimant ignored the directives of the employer because he was upset about the previous management team leaving and because he wanted another job. Ms. Virtue explained the three strikes policy but for some reason the claimant felt he would not be fired and seemed to believe it was the employer's responsibility to "force (him) to be responsible and try harder" rather than doing that on his own as part of being a responsible employee. While not discounting the claimant's disability, in this case it appears the claimant was able to perform his duties when he wanted to but chose not to do so on several occasions. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The March 2, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits 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 is overpaid benefits in the amount of \$840.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css/kjw