

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRON HAYNES

Claimant

EXPRESS SERVICES INC

Employer

APPEAL NO: 09A-UI-09852-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/09

Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated July 1, 2009, reference 01, that held the claimant was not discharged for misconduct on June 3, 2009, and benefits are allowed. A telephone hearing was held on July 27, 2009. The claimant did not participate. Deborah Beichley, Owner/Manager, participated for the employer.

ISSUES:

Whether the claimant was discharged for misconduct in connection with employment.

Whether the claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment on April 22, 2007, and last worked for the employer as a full-time general laborer on assignment at Control Container Management on June 3, 2009. While conducting a monthly audit for May 2009, a Control Container employee discovered that the claimant was working an inordinate amount of overtime hours in relationship to other first shift employees.

Owner/Manager Beighley and the Control Container employee confronted the claimant with the audit report that showed excessive overtime hours worked by him. The claimant admitted that he did not work the overtime hours, but he denied he was the person who used his time card to record the hours though he kept it in his wallet. The claimant had no explanation as to why he failed to report the excessive hours and pay he received. The claimant was discharged for falsification of company records.

The claimant's first shift ended at 3:30 pm, and the overtime showed him clocking-out at 7:00 pm. The claimant had been observed on occasion in the second shift lunch room area by employees who break between 7:00 pm and 7:30 pm.

The claimant failed to respond to the hearing notice. The claimant has claimed for and received benefits on his current claim.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on June 3, 2009 due to falsification of time card records.

The employer offered un-refuted testimony that the claimant falsified company time card records by claiming overtime hours that he did not work. The claimant's actions are theft, and constitute job disqualifying misconduct.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since the claimant is denied benefits by reason of this decision, the overpayment issue is remanded.

DECISION:

The unemployment insurance decision dated July 1, 2009, reference 01, is reversed. The claimant was discharged for misconduct on June 3, 2009. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs