

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PHILLIP M CREESE JR**  
Claimant

**APPEAL NO. 11A-UI-09408-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GODFATHER'S EXTERMINATING INC**  
Employer

**OC: 06/19/11  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated July 14, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 9, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Kim Lykken participated in the hearing on behalf of the employer with witnesses Elizabeth Thielen and Erin Kayser.

**ISSUES:**

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked full-time for the employer as an exterminating service technician from November 1, 2010, to June 16, 2011. The claimant was informed and understood that he was required to keep accurate logs of his time spent at each job site and the activities performed there. The employer has global positioning system (GPS) equipment in its vehicle that allows the employer to determine the location of a vehicle at any time.

After receiving a complaint from a customer in June 2011 that the claimant was not performing the service work required, the employer conducted an investigation that included comparing the logs the claimant prepared versus GPS information about his location at points in time in April and May 2011.

The investigation disclosed the claimant had consistently overreported the hours he was working in April and May, with up to five hours of time in the log over the actual time he was present at the work location. There were two times, on April 20 and May 11, where the GPS did not show him at the farm at all, but the claimant reported in his log working six and seven hours respectively. The claimant misrepresented information in the log.

After completing its investigation, the employer discharged the claimant on June 16, 2011, for falsifying his logs.

The claimant filed for and received unemployment insurance benefits after his claim for benefits filed on June 19, 2011, which were used to apply to an earlier overpayment of benefits.

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

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The preponderance of the evidence establishes the claimant substantially inflated the hours of work on his logs and it was willful.

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits that were used toward a prior overpayment but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated July 14, 2011, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw