

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID M STANLEY

Claimant

APPEAL NO: 100-UI-16671-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PEPSI-COLA GENERAL BOTTLERS INC

Employer

OC: 06/27/10

Claimant: Respondent (4)

Section 96.5-2-a – Discharge/Misconduct/Requalification

Section 96.6(2) – Double Affirmance

STATEMENT OF THE CASE:

Pepsi-Cola General Bottlers, Inc. (employer) appealed a representative's July 30, 2010 decision (reference 01) that concluded David M. Stanley (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. There had been a prior hearing regarding the employer's appeal scheduled and administrative law judge's decision issued on September 30, 2010 under 10A-UI-11181-S2T which also allowed benefits, but after the employer made a further appeal to the Employment Appeal Board, this matter was remanded to the Appeals Section for a new hearing. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on January 19, 2011. The claimant participated in the hearing. Lucas Gray appeared on the employer's behalf and presented testimony from one other witness, Dan McWherter. 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.

ISSUES:

Was the claimant discharged for work-connected misconduct? Is the claimant eligible for further benefits? Is the claimant subject to repayment of benefits previously paid?

FINDINGS OF FACT:

The claimant started working for the employer on September 20, 2001. He worked full time as a maintenance mechanic at the employer's Des Moines, Iowa area production facility. His last day of work was June 25, 2010. The employer suspended him on that date and discharged him on June 28, 2010. The stated reason for the discharge was falsification of an inspection document.

On or about June 24 the claimant indicated on a work order that he had performed the monthly preventative maintenance on a can blower conveyer belt. Within a relatively short time thereafter, the belt exploded and that line went down. When questioned, the claimant admitted that before checking off on the work he had not actually opened the guard or touched the belt, but had simply listed to the belt.

On June 21 the claimant had been given a suspension on a work performance issue for failing to do a test run which would have disclosed an incorrectly set belt. He had also recently been given a written warning for work performance issues on May 11, 2010. As a result of his false report of having checked the conveyer belt, particularly after the recent prior warning and suspension for work performance issues, the employer discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective June 27, 2010. His weekly benefit amount was established as \$388.00. The claimant received unemployment insurance benefits weekly through the week ending October 23, 2010. He then reopened the claim by filing an additional claim effective December 26, 2010. Agency records show that the reopening followed the ending of employment with another employer that began on or about August 8 and ended on or about December 22, 2010. The Agency records further show that the claimant has earnings from that other employer of over \$3,888.00 after the separation from employment from the employer in this case.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's false report that he had checked the conveyer belt when he only listened to it without a physical or visual inspection, particularly after the prior disciplines indicating concern regarding the claimant's job performance, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of June 25, 2010. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is then otherwise eligible.

However, the administrative law judge further concludes from information contained in the administrative record that by December 26, 2010 when the claimant reopened his claim, he had

requalified for benefits after the separation from this employer. Accordingly, as of December 26, 2010 benefits are allowed, but the account of the employer shall not be charged.

Because the claimant's separation was disqualifying, benefits were paid prior to his requalification to which the claimant was not entitled. Normally those benefits would need to be recovered in accordance with the provisions of Iowa law.

However, Iowa Code § 96.6-2 provides in pertinent part:

. . . If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid . . .

Because the claimant's separation was found not to be disqualifying by the original representative's decision, and that decision was affirmed by the administrative law judge's decision issued under 10A-UI-11181-S2T, even though the decision issued today finds the separation to be disqualifying, the double affirmance rule applies and the benefits received between June 27 and October 23 are not subject to recovery.¹

DECISION:

The representative's July 30, 2010 decision (reference 01) is modified in favor of the employer. The employer discharged the claimant for disqualifying reasons. The claimant has requalified for benefits since the separation. Benefits are allowed as of December 22, 2010, provided the claimant is otherwise eligible. Because of the double affirmance rule, the claimant is not subject to recovery of benefits paid for the period between June 27 and October 23, 2010, but the account of the employer shall not be charged for any benefits paid after the separation.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs

¹ This does not affect another determination made in a representative's decision issued on November 18, 2010 (reference 02) which concluded that the claimant was overpaid some of the benefits he received through October 23 due to a failure to properly report his wages earned in his new employment when making his weekly claims for unemployment insurance benefits; Agency record indicate that these overpaid benefits have already been recovered through offset.