

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS K ARTMAN
Claimant

APPEAL NO. 08A-UI-01544-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN GAMES INC
Employer

**OC: 01/13/08 R: 12
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 5, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on February 28, 2008. Claimant participated. Employer participated through Todd Monaghan and Kari Hockemeier and was represented by Lynn Corbeil of Johnson & Associates. Employer's Exhibits 1 through 4 were received. Claimant called in at 8:43 a.m. after the hearing had already begun because he had not read the hearing notice instruction.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits and if so, whether he is overpaid benefits as a result.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time web press operator from November 11, 1999 until December 27, 2007 when he was discharged. He was a helper under the tutelage of an operator before he became a press operator in 2001. He knew the machine was having some problems on December 26 but repeatedly failed to perform operator quality checks after each skid and ran four and one-half skids (24 faces on each sheet with 375 sheets on each skid) with the wrong serial number. Claimant knew the machine was having problems but did not fix it or verify that a maintenance worker did so and also failed to regularly check for quality issues even when he anticipated problems. The serial number discrepancy was discovered by the press operator on the next shift after running his first skid. Had claimant found and reported or corrected the error after his first skid, he would not have been fired. Erroneous serial numbers may adversely affect security issues for employer's customers and may cause employer to have to destroy the product or hold it to sell to another customer that does not require strict serial number guidelines. In any event, an entire shift's block of time was lost on this machine due to claimant's failure to quality check the serial numbers on the first and last sheets on each skid run according to the Quality Requirements for the Bingo Web Press Operator posted at the press. He failed to perform items 1, 2, and 3 under Skid Change.

(Employer's Exhibit 2) Claimant should have caught the serial number problem on the first skid during the 40 minutes he had between skids. Employer had warned him on July 17, 2007 for printing seven skids with a wrong serial number and told him he must check every skid coming off the press without fail or face termination. (Employer's Exhibit 3) On September 28, 2007 employer warned him in writing again and suspended him for five days for running four and a half skids with bad serial numbers on one card of each set. He was admonished to "check the set, start & end sheet of every skid coming off the press for serial number accuracy." "Another incident involving serial number accuracy will result in termination, period." (Employer's Exhibit 4)

The claimant has received unemployment benefits in the amount of \$2,160.00 since filing a claim with an effective date of January 13, 2008.

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.

Iowa Code § 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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Claimant's repeated failure to adequately and fully perform his job duties after having established the ability to do so and after having been warned is evidence of either his willful intent not to do so or persistent negligence and either one amounts to job related misconduct. Benefits are denied.

Iowa Code § 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 February 5, 2008, 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 \$2,160.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs