

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALFREDO ALDANA-MADERA**  
Claimant

**APPEAL NO: 14A-UI-10590-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REMBRANDT ENTERPRISES INC**  
Employer

**OC: 09/07/14**  
**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 September 30, 2014, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 30, 2014. The claimant participated in the hearing. Pam Winkle, Training Specialist/Human Resources Administrator, 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 a full-time maintenance technician hired on a temporary basis for Rembrandt Enterprises from May 16, 2014 to September 3, 2014. He was discharged following a non-work-related injury, failure to return immediately following his release to return to work, and failing to meet with the employer in a timely manner.

The claimant was hired on a temporary basis through Iowa Central Community College for 180 days with the potential for it to become a full-time position. The parties agree the claimant was not making satisfactory progress on the job and it is unlikely the employer would have continued his employment after the 180 days expired.

On August 22, 2014, the claimant sustained an injury to his clavicle while riding his bike and was excused from work by his treating physician for ten days which would have allowed him to return to work September 1, 2014. That date fell on Labor Day but the employer's plant runs 24 hours a day, 365 days per year and the claimant often worked weekends. On August 25, 2014, the employer called the claimant and asked him to come in to talk about how they would proceed after his release and the claimant stated he would have to let the employer know what day would work for him. On September 3, 2014, the claimant met with the employer. He had been to Spencer for an appointment with his physician but did not tell the employer he had been

to his doctor and that he had been allowed to return to work. He also failed to provide the employer with the doctor's note he had just received earlier that day. Because the claimant delayed the meeting with the employer, did not provide a doctor's release or tell the employer he had been released, and was not making satisfactory progress in his job, the employer notified him that his employment was terminated effective September 3, 2014.

### **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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

While the claimant suffered a non-work-related injury August 22, 2014, he could have returned to work September 1, 2014. The employer had called the claimant August 25, 2014, and asked to meet with him to discuss how they would continue the claimant's employment while addressing his performance deficiencies. Instead of meeting with the employer as soon as possible after it called, the claimant waited ten days before meeting with the employer. Additionally, when the claimant did meet with the employer he did not tell it he had just been to his doctor and had a doctor's excuse or that he could have returned to work September 1, 2014.

The employer took a chance in hiring the claimant on a temporary basis through a program offered by Iowa Central Community College. It had never participated in the program in the past and stated, after its experience with the claimant, it never will again due to the claimant's performance, lack of progress and lackadaisical attitude. When an employee is in that position with an employer, and as a student with the potential for a temporary job to become a full-time job, he has an even greater duty of cooperation and willingness to do anything lawful the employer asks. On August 25, 2014, the employer reasonably requested the claimant meet with it to discuss what it could do to improve the claimant's job performance. Rather than doing everything possible to meet with the employer as soon as possible, the claimant waited ten days before contacting the employer to state he could meet that day. That is simply unacceptable and shows a disregard of the employer's interests and the claimant's duties and obligations to the employer. Consequently, the administrative law judge concludes that because the claimant did not return to work after the ten days he was off due to the bicycle accident and failed to meet with the employer upon its request within a reasonable amount of time, his actions rise to the level of disqualifying job misconduct as that term is defined by Iowa law. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

871 IAC 24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists.

The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

The unemployment insurance law provides that benefits must 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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. In this case, the claimant has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer participated in the fact-finding interview personally through the statements of Training Specialist/Human Resources Administrator Pam Winkle. Consequently, the claimant's overpayment of benefits cannot be waived and he is overpaid benefits in the amount of \$1,912.00.

**DECISION:**

The September 30, 2014, 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 has received benefits but was not eligible for those benefits. Therefore, the claimant is overpaid benefits in the amount of \$1,912.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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