

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ADAM WOLF**  
Claimant

**APPEAL NO: 11A-UI-02251-E**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACTION AUTO BODY LLC**  
Employer

**OC: 01-02-11**  
**Claimant: Respondent (2R)**

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 February 17, 2011, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder on March 16, 2011 and continued by telephone March 18, 2011. The claimant participated in the hearing. Michelle Ogle-Riccelli, Business Manager; Chad Ogle, Owner; and Salah Salah, Painter, 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 assistant to the senior technicians for Action Auto Body from November 1, 2010 to December 2, 2010. He started his tenure with the employer as a technician. The claimant attended Central Campus in Des Moines and participated in the collision repair courses and also worked for his instructor at his shop before winning a full scholarship to Wyotech where he majored in collision and refinishing technology with a minor in business management. He then worked in the auto body repair business for three years prior to his date of hire with the employer.

Within one week of starting his employment the claimant was asked to remove an inner structural left hand apron on a car and was told that upon completion of that task he should consult the employer for inspection and quality control. Instead of talking to the employer the claimant proceeded to perform a permanent weld without first applying the corrosion resistant material required which is a warrantable and structural step. If not done the repair primer will fail and could result in major or minor damage as it involves the infrastructure of the car. The claimant agrees that was a basic step in any vehicle repair welding and he was aware he needed to perform it but stated that he “got ahead of myself and forgot.” The new panel that the claimant welded into place had to be removed so the warrantable corrosion resistant welding

primer could be applied to all mating services of bare steel which took an additional four to five hours. Within the next week or two the claimant also failed to consult the employer prior to removing bedrail clips and molding from a pickup truck and the molding and bedrail caps and clips were damaged. The claimant agrees if he had assistance it would not have happened and that he needed to slow down. The employer sent the claimant home early as a disciplinary measure following that incident and he was no longer allowed to work as an independent technician but was reassigned to work with senior technicians. On December 1, 2010, the claimant was directed to work with a senior painter and clean and buff a vehicle for delivery following an \$11,000.00 repair job due to be finished that day. The senior painter taped the areas they were not to buff and specifically told the claimant to stay away from the door handles, moldings and spoiler and just do the flat areas and he would do the detailed areas. The claimant felt he was "fairly experienced" in buffing. The senior painter told the claimant to watch his edges and they each started at the front of the car on opposite sides and began buffing. When buffing a vehicle the technician is supposed to stop every 30 to 45 seconds and wipe the areas he has buffed and look for any damage to the paint job that may have been done by the buffing. As the senior painter and the claimant began buffing the car the claimant reached the middle of the back of the car when the senior painter was still working on the back door or the car. The senior painter heard the claimant say, "Oh shoot," and they learned the claimant had buffed through the paint and several layers of material applied prior to the final coat of paint on the back door and both corners of the spoiler, which he was not supposed to buff. The claimant indicated he was trying to take his time but may not have "focused on the right thing" because he focused on the actual buffing and what the flat side of the buffer was hitting rather than also paying attention to what the edge of the buffer was hitting. He agrees he knew to pay attention to both aspects of buffing. He did notice that the senior painter was further behind him but did not think he should have to slow down because the senior painter's speed was not the same as his. The claimant stated he again got "a little ahead of myself." He was paid hourly and agrees the employer did not pressure him to finish jobs quickly but wanted tasks completed correctly. The claimant realizes he needs to "slow down, take it easy and take my time." The employer arrived almost simultaneously to the claimant and senior painter discovering the claimant's buffing errors and as a result of the claimant's actions the employer had to remove the deck lid and spoiler, which is very difficult to do without damaging the work already done to the vehicle, and take the door off and reassemble it. The repair took two days to complete and because the car was due on an insurance deadline that day the employer was forced to pay for the customer's rental car extension as well. The claimant was upset and said he made a mistake and the employer sent him home for the day while he contemplated what disciplinary action to take against the claimant. After considering the situation and the \$3,000.00 to \$5,000.00 cost of the claimant's combined errors in one month of employment, the employer made the decision to terminate the claimant's employment.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

#### **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 § 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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). A portion of the definition of misconduct as listed in the above stated administrative law section is limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of the standards of behavior which the employer has the right to expect of employees. Both parties agree that applying the warrantable corrosion resistance welding primer to all mating services of bare steel is a basic and elementary step to be completed prior to welding and the claimant not only failed to apply that material but proceeded to weld without first consulting the employer to make sure everything was properly done prior to the welding which would have prevented the error. The claimant stated he was well aware the corrosion resistance material must be applied prior to a weld but "got ahead" of himself and considered himself skilled enough that he did not have to have the employer check his prep work before beginning the welding. Similarly, the claimant knew to check with the employer before removing the clips and molding on the pickup truck and failed to do so as he thought he had enough experience to proceed on his own but concedes the damage would not have occurred if he consulted the owner or a senior technician prior to acting. Finally, the claimant disregarded the senior painter's explicit instructions not to buff the spoiler and deck lid which resulted in extensive damage and much more time and work for the employer than necessary as well as causing it to miss the insurance deadline. The claimant had the necessary education and experience to perform the job satisfactorily, was fully aware of the steps to be taken in each incident and knew that he needed to speak to the

employer before each step but disregarded those basic steps and the employer's directions. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

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. 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 but was not eligible for those benefits. The matter of determining 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 February 17, 2011, 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. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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