

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRAVIS R BAUGHMAN**  
Claimant

**APPEAL NO. 11A-UI-11695-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARBLE WORKS INC**  
Employer

**OC: 08/07/11**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Marble Works, Inc. filed a timely appeal from an unemployment insurance decision dated August 26, 2011, reference 01, that allowed benefits to Travis R. Baughman. After due notice was issued, a telephone hearing was held September 29, 2011, with General Manager Andrew Strawn participating for the employer. Employer Exhibit One was admitted into evidence. The claimant did not respond to the hearing notice by providing a telephone number at which he could be contacted. The administrative law judge takes official notice of agency benefit payment records.

**ISSUE:**

Was the claimant discharged for misconduct in connection with the employment?

**FINDINGS OF FACT:**

Travis R. Baughman was employed as a laborer by Marble Works, Inc. from January 25, 2011 until he was discharged August 5, 2011. The final incident leading to discharge occurred on August 5, 2011 when Mr. Baughman reported for work approximately 40 minutes late. He had not given the employer advanced notice that he would be late. In addition to the final incident, the employer also considered incidents occurring on August 3 and August 4, 2011. Mr. Baughman failed to clock in on August 3, 2011. At the end of the day he told General Manager Andrew Strawn that he had arrived for work at 6:00 a.m. Other workers advised Mr. Strawn that Mr. Baughman had in fact arrived at 6:45 a.m. Mr. Baughman then clocked in at 10:45 p.m. on August 3, 2011 and worked until approximately 6:00 a.m. He left Mr. Strawn a list of work that he had supposedly completed. Mr. Strawn had not authorized these hours. It is company policy that employees do not work extra hours without first obtaining permission. Furthermore, a review of the work supposedly completed by Mr. Baughman established that not all of the work had been done and that some of the work had to be re-done. Based on these events, Mr. Strawn discharged Mr. Baughman when Mr. Baughman arrived for work late on August 5, 2011.

Mr. Baughman has received unemployment insurance benefits since filing a claim effective August 7, 2011.

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

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does.

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.

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's evidence has established that Mr. Strawn was tardy on August 3 and 5, that he worked unauthorized overtime on the evening of August 3 into the morning of August 4 and made false statements to the employer as to the hours he worked on August 3 and as to the work he completed during the unauthorized overtime. This evidence is sufficient to establish misconduct. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of repayment of benefits is remanded to the Unemployment Insurance Services Division.

**DECISION:**

The unemployment insurance decision dated August 26, 2011, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The question of repayment of benefits is remanded.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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