

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN T ABARR
Claimant

APPEAL NO: 10A-UI-00700-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

C J COOPER & ASSOCIATES INC
Employer

OC: 12/13/09

Claimant: Respondent (2/R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

C. J. Cooper & Associates, Inc. (employer) appealed a representative's January 6, 2010 decision (reference 01) that concluded Steven T. Abarr (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on February 23, 2010. The claimant participated in the hearing. Tara Peyton appeared on the employer's behalf and presented testimony from one other witness, Sarah Kolar. 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.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 2, 2009. He worked full time as a sales representative in the employer's third party drug testing collection and administration business. His last day of work was November 23, 2009. The employer discharged him on that date. The stated reason for the discharge was lack of sales complicated by a lack of truthfulness and accountability.

The employer had previously expressed concerns to the claimant regarding his lack of sales. The employer had further previously dealt with issues on the claimant's expense reports where the employer informed the claimant it felt he was claiming expenses that were not work-related and that he was not being truthful on those reports. On or about October 21, 2009 the employer advised the claimant that he needed to improve his performance by November 15.

After October 21 the claimant reduced his level of reporting to the employer as to what client meetings he might have arranged or what his schedule was. However, on about November 16 the claimant had informed Ms. Peyton, the director of client services, that he had a meeting set up with a potentially large client in Des Moines for November 20. On November 19, in response

to a series of email communications with Ms. Kolar, the business co-owner, the claimant had indicated that the meeting was scheduled for 2:00 p.m. on November 20. On the morning of November 20 Ms. Peyton attempted a number of times to communicate with the claimant by email and voice mail, inquiring about the meeting. When the claimant did not respond, she contacted the potential client, which indicated that there was no appointment.

When the employer confronted the claimant on November 23, he admitted that there was no meeting with the client. He further admitted he had been in Des Moines, but that it had been for a family-related matter. He asserted that he had previously told Ms. Peyton that he was going to be in Des Moines for the family-related matter. Ms. Peyton more credibly testified that the claimant had not told her of this family-related matter. The claimant further asserted that he had not indicated that he had an actual set appointment, but that he was in communication with someone at the potential client and was trying to set up for the time he was going to be in Des Moines. The claimant's testimony that he had not indicated that he had an actual set appointment is not credible particularly in light of the email communications with Ms. Kolar.

The claimant's dishonesty regarding the claimed November 20 appointment was clearly an attempt to mask a failure to take appropriate action to improve his sales. As a result of the claimant's behavior and lack of truthfulness and accountability regarding the claimed November 20 appointment following the employer's prior expression of concern regarding his truthfulness, and lack of sales, the employer discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective December 13, 2009. The claimant has received unemployment insurance benefits after the separation.

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 dishonesty with the employer regarding supposed efforts to improve his sales 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 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 ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's January 6, 2010 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving

unemployment insurance benefits as of November 23, 2009. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs