IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 05A-UI-08371-SWT
OC: 04/17/05 R: 03
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 11, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 30, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Steve Weidner, attorney at law, participated in the hearing on behalf of the employer with witnesses, John Clopton, Al Beatty, Nermin Ferkic, Richard Sabin, Dave Westley, and Linda Nielsen. Exhibits One through Eight were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked as a public safety officer from October 12, 1996, to June 7, 2005. Nermin Ferkic, the public safety coordinator, was the claimant's supervisor.

In the morning on May 19, 2005, a public safety vehicle stalled and could not be started. Ferkic notified Doug Hundley, the plant manager and supervisor of the vehicle maintenance department, about the problem. Hundley told him that he would have the vehicle maintenance technician, Al Beatty, determine what was wrong with the vehicle and whether it was under warranty and take care of the matter.

Later that day, Beatty checked the stalled vehicle when he got to work and determined the starter was bad and was not under warranty. Later that day, after the claimant reported to work, he checked out the vehicle as well. He talked to Beatty and found out that starter was not under warranty. Beatty said something about needing to move the car to the maintenance shop but did not instruct the claimant to move the car. The clamant then called Ferkic and told him about the problem with the starter and that it was not under warranty. Ferdic told the claimant to let Beatty handle the car. The claimant also called Hundley who also told the claimant that Beatty would take care of the car.

The claimant disregarded what Ferdic and Hundley had told him. He decided that he would move the vehicle to the shop, and when he could not find anyone nearby to help him, he decided that he would move the car by himself. He got a maintenance truck and a chain. He hooked one end of the chain to the truck and one end to the car and began pulling the car without anyone in the car to control it. The chain ended up getting tangled and unhooked from the car which rolled forward and into the propeller of the college's airplane, which was parked in a campus lot. Both the car and the airplane sustained substantial damage from the accident.

On June 7, 2005, the claimant was placed on paid administrative leave pending an investigation of the incident. After completing the investigation the employer notified the claimant on June 22, 2005, that he was discharged for moving the vehicle without permission in a grossly negligent manner.

The claimant filed for and received a total of $648.00 in unemployment insurance benefits for the weeks between August 14 and 20, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

If this case just involved a single act of negligence by the claimant, the claimant would not be disqualified because the rule provides that negligence must be recurrent to be disqualifying as interpreted by the Court of Appeals in Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). This is because the definition found in 871 IAC 24.32(1)a is identical to the classic definition of work-connected misconduct announced in Boynton Cab Co. v. Neubeck, 296 N.W. 636, 640 (Wis. 1941) with the exception of one word. In Boynton Cab, the Wisconsin court ruled that disqualifying misconduct included "carelessness or negligence of such degree **or** recurrence as to manifest equal culpability, wrongful intent or evil design" (emphasis added). Id. at 640. By using or rather than of as found in 871 IAC 24.32(1)a, a single act of negligence could amount to disqualifying misconduct if serious enough (e.g. reckless behavior or gross negligence). Id. at 641.

It is not necessary to decide in this case whether the use of the word of in 871 IAC 24.32(1)a was a scrivener's error or was intended to vary from the classic definition adopted in many jurisdictions. See, e.g., South Dakota Codified Laws § 61-6-14.1(4) ("Carelessness or negligence of such degree or recurrence as to manifest equal culpability or wrongful intent"). This is because the claimant's conduct was negligent but was also willfully contrary to the

direction given to him by his supervisors to let the maintenance department deal with the vehicle. Even though the claimant did not intend to damage the vehicle by moving it and probably felt he was doing the maintenance department a favor by taking care of it for them, he intentionally violated the instructions he was given by his supervisors. As such, his violation of the instructions given to him was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid $648.00 in unemployment insurance benefits for the weeks between August 14 and 20, 2005.

DECISION:

The unemployment insurance decision dated August 11, 2005, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid $648.00 in unemployment insurance benefits, which must be repaid.

saw/kjw