

**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**

**JOE A GODFROY  
2515 INDIANOLA AVE  
DES MOINES IA 50315**

**COMMUNITY WHOLESale OF  
DES MOINES INC  
R&R ALUMINUM  
630 SE 15<sup>TH</sup>  
DES MOINES IA 50317**

**Appeal Number: 05A-UI-02315-HT  
OC: 01/16/05 R: 02  
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, 4<sup>th</sup> 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)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, R&R Aluminum (R&R), filed an appeal from a decision dated March 2, 2005, reference 01. The decision allowed benefits to the claimant, Joe Godfroy. After due notice was issued a hearing was held by telephone conference call on March 22, 2005. The claimant participated on his own behalf. The employer participated by General Manager Vicki Douglas and Vice President Andrew Wilson.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Joe Godfroy was employed by R&R from August 23, 2004 until January 11, 2005. He was the full-time warehouse manager.

In early December the claimant received a verbal warning from Vice President Andrew Wilson about not taking home the company truck at night or on weekends. On December 14, 2004, he received a written warning for dishonesty. Mr. Godfroy had been aware of one of the truck drivers having an open alcohol container in the company truck, but he attempted to "cover it up" by asserting that it was only a closed container. He was advised his job was in jeopardy if there were any further incidents of dishonesty.

On Friday, January 7, 2005, the claimant took home one of the company trucks. For some reason he used the truck to bring to the warehouse a go-cart he had recently completed. He took it home and did not return the truck until the next day. On Monday, January 10, 2005, General Manager Vicki Douglas gave the claimant a list of duties to be done by him and his crew in the warehouse. It consisted of general cleaning of some of the areas which needed attention.

The next day the general manager and vice president inspected the areas in question and found they had not been cleaned. When questioned, Mr. Godfroy said he had given the orders to his two subordinates, but they had refused to do the work. The two other employees were questioned and denied they had been told to do any of the work. At that point the claimant was notified by Ms. Douglas and Mr. Wilson he was being discharged.

Joe Godfroy has received unemployment benefits since filing a claim with an effective date of January 16, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 claimant had been advised his job was in jeopardy if there were any further incidents of dishonesty. After that warning he violated the company policy regarding the use of the company truck for personal business, then he did not adequately supervise his employees to do the work the crew had been assigned. The claimant asserted his crew had ignored his orders, although they denied being given any such orders. Even if the employees were the ones being dishonest, it is evident the claimant was not performing his primary duty of supervising the other workers and making sure they performed the duties they were assigned by the management. This is conduct not in the best interests of the employer and the claimant is disqualified.

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.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The representative's decision of March 2, 2005, reference 01, is reversed. Joe Godfroy is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$2,477.00.

bgh/tjc