

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THOMAS P RETHMAN**

Claimant

**APPEAL NO. 20A-UI-09600-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOLD EAGLE COOPERATIVE**

Employer

**OC: 05/31/20**

**Claimant: Respondent (2)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

Iowa Code Section 96.3(7) – Recovery of Overpaid Benefits

Public Law 116-136, Section 2104(b) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 10, 2020, reference 01, decision that held the claimant was eligible for benefits provided he met all other eligibility requirements and that the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on June 3, 2020, for no disqualifying reason. After due notice was issued, a hearing was held on September 25, 2020. Claimant Thomas Rethman participated. Lisa Mericle represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 4 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the claimant was overpaid regular benefits.

Whether the claimant must repay overpaid regular benefits.

Whether the claimant was overpaid Federal Pandemic Unemployment Compensation.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Thomas Rethman was employed by Gold Eagle Cooperative as a full-time maintenance shop supervisor from September 2019 until June 3, 2020, when the employer discharged him from the employment. On June 2, 2020, Mr. Rethman was off-duty and on paid time off (PTO) when he responded to the scene of an accident involving the employer's tractor-trailer. Though Mr. Rethman lacked a commercial driver's license (CDL) and knew he was not properly licensed to operate the vehicle, he elected to operate the employer's tractor-trailer to return it to the

employer's facility. The parties disagree regarding the distance between the scene of the accident and the employer's facility. The employer thinks it was 10 miles. The claimant thinks it was three miles. The employer had other appropriately licensed staff available to operate the tractor-trailer to return it to the employer's facility, as well as handbook policies pertaining to operation of employer vehicles. The employer alleges that Mr. Rethman consumed alcohol before responding to the scene of the accident. The employer has a Drug-Free Workplace policy that strictly prohibits the use or possession of alcohol while on the employer's property or engaged in business on behalf of the employer. The policy was set forth in the employee handbook that Mr. Rethman received and acknowledged early in the employment. The employer has an alcohol testing policy, but did not subject Mr. Rethman to alcohol testing on the date in question to determine whether he was indeed under the influence of alcohol. Mr. Rethman was in close contact with a law enforcement official at the scene of the accident and did not arouse in that official a concern that he was under the influence of alcohol. The employer's commercial drivers are subject to U.S. Department of Transportation Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol testing. At the time the employer discharged Mr. Rethman from the employment, the employer told Mr. Rethman that he represented a liability.

The claimant established an original claim for benefits that was effective May 31, 2020. This employer is a base period employer. The claimant received \$3,367.00 in regular benefits and \$4,200.00 in Federal Pandemic Unemployment Compensation (PPUC) benefits for the seven weeks between May 31, 2020 and July 18, 2020.

On August 7, 2020 an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed the claimant's separation from the employment. The employer participated in the fact-finding interview call.

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

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

Iowa Code section 321.174(1) and (2)(b) provide, in relevant part, as follows:

Operators licensed — operation of commercial motor vehicles.

1. A person, except those expressly exempted, shall not operate any motor vehicle upon a highway in this state unless the person has a driver's license issued by the department valid for the vehicle's operation.

...

(2)(b). A person who operates a commercial motor vehicle upon the highways of this state without having been issued a driver's license valid for the vehicle operated commits a simple misdemeanor.

Violation of a specific work rule, even off-duty, can constitute misconduct. In *Kleidosty v. EAB*, 482 N.W.2d 416, 418 (Iowa 1992), the employer had a specific rule prohibiting immoral and illegal conduct. In its analysis, the Court stressed the importance of a specific policy, even one which was stated only in terms of illegal or immoral conduct.

The evidence in the record establishes a discharge for misconduct in connection with the employment. On June 2, 2020, Mr. Rethman knowingly and intentionally violated the law by operating the employer's tractor-trailer rig without the required driver's license. Mr. Rethman placed himself at risk of sanction for the for the law violation. Mr. Rethman placed himself and

others at risk of injury. Mr. Rethman unnecessarily exposed the employer to liability in connection with his unlicensed, unauthorized and potentially uninsured operation of the vehicle. Though Mr. Rethman was in off-duty status at that time of the incident, his misconduct was clearly in connection with the employment due to his illegal operation of the employer's equipment. Regardless of whether an unsuspecting board member requested that Mr. Rethman drive the vehicle back to the employer's facility, Mr. Rethman's operation of the vehicle was a violation of the law and demonstrated an intentional and substantial disregard of the employer's interests in complying with the law. If indeed the board member made such a request, it would be incumbent upon Mr. Rethman to advise the board member that he lacked the proper licensure and could not legally operate the vehicle. Mr. Rethman is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Rethman must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible for benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

M. Rethman received \$3,367.00 in regular benefits for the seven weeks between May 31, 2020 and July 18, 2020, but this decision disqualifies him for those benefits. Accordingly, the regular benefits Mr. Rethman received constitute an overpayment of benefits. Because the employer participated in the fact-finding interview, he is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, the claimant is also disqualified from receiving Federal Pandemic Unemployment Compensation (FPUC). The \$4,200.00 in Federal Pandemic Unemployment Compensation (PPUC) benefits the claimant received for the seven weeks between May 31, 2020 and July 18, 2020 constitutes an overpayment of benefits. Claimant is required to repay those benefits.

**DECISION:**

The August 10, 2020, reference 01, decision is reversed. The claimant was discharged on June 3, 2020 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$3,367.00 in regular benefits for the seven weeks between May 31, 2020 and July 18, 2020. The claimant is overpaid \$4,200.00 in Federal Pandemic Unemployment Compensation (PPUC) benefits for the seven weeks between May 31, 2020 and July 18, 2020. The claimant must repay the overpaid regular and FPUC benefits. The employer's account is relieved of liability for benefits, including liability for benefits already paid.



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James E. Timberland  
Administrative Law Judge

November 16, 2020  
Decision Dated and Mailed

jet/scn

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**