

**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**

**MICHAEL R LAWSON
1608 W 6TH ST
DAVENPORT IA 52802**

**EARLE M JORGENSEN COMPANY
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 05A-UI-06706-CT
OC: 05/29/05 R: 04
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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Earle M. Jorgensen Company (Jorgensen) filed an appeal from a representative's decision dated June 16, 2005, reference 01, which held that no disqualification would be imposed regarding Michael Lawson's separation from employment. After due notice was issued, a hearing was held by telephone on July 18, 2005. Mr. Lawson participated personally. The employer participated by Bill Jones, Plant Manager, and Bob Bates, General Sales Manager. The employer was represented by Tannis Burrell of TALX UC eXpress. Exhibits One through Six were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Lawson was employed by Jorgensen from June 21, 2004 until May 27, 2005 as a full-time warehouseman. He was discharged for repeated errors in the performance of his job.

On July 14, 2004, Mr. Lawson received a verbal warning because he entered the incorrect weight on a shipment, causing the employer's customer to be overcharged. He again entered an incorrect weight on September 10 and was given a written warning. Mr. Lawson received a written warning and three-day suspension on October 27 because of numerous problems with work he performed. Two customers had requested that steel be shipped in bundles that did not exceed a specified weight. The weight limitation was to enable the customer's equipment to handle the bundles. The instructions regarding the weight limitations were on the paperwork provided to Mr. Lawson. However, he shipped the steel in bundles significantly in excess of that specified by the customer. The warning was also due to the fact that Mr. Lawson shipped damaged product. It was determined that the damage did not occur in shipment as the damage was to material inside the bundle. Finally, the warning covered the fact that Mr. Lawson failed to spray the ends of certain bundles with yellow paint. The bundles to be painted are called "just in time" bundles and the ends are sprayed so they can be easily identified. Mr. Lawson indicated he forgot to spray the ends.

The employer periodically questioned Mr. Lawson as to why he was making errors. He was asked if he needed additional training but only indicated that he just needed to slow down while working in order to avoid mistakes. He never notified the employer that he needed additional training or any other assistance in performing his job to the employer's standards. On May 12, the employer discovered several errors in which Mr. Lawson had entered the weight of material based on information in the computer rather than taking actual measurements. As a result, the employer undercharged its customers on the five orders effected by the error. The final incident that triggered the discharge concerned errors found on May 26. The errors had resulted in customers being overcharged as shorter lengths of steel than ordered were shipped. Mr. Lawson was notified of his discharge on May 27, 2005.

Mr. Lawson has received a total of \$1,670.00 in job insurance benefits since filing his claim effective May 29, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Lawson was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Lawson knew how to correctly perform his job. The errors he made were not the product of lack of training. As he indicated to the employer, the problems occurred because he did not take the time to make sure he was filling orders as specified in his written materials. Mr. Lawson had received a verbal warning, a written warning, and a three-day suspension but continued to make errors. Errors were found on two additional occasions after his suspension in October of 2004.

Mr. Lawson's errors were not the product of negligence. He simply failed to take the time necessary to read his orders before filling them. He failed to take the time to confirm that what

was being shipped was consistent with what was ordered. He failed to take the steps necessary to properly weigh material in order to avoid billing irregularities. Mr. Lawson was clearly on notice that his errors were jeopardizing his continued employment with Jorgensen. His errors had the potential of jeopardizing the employer's customer relations. His errors also created more work for the employer as each error had to be researched and, on some occasions, additional billings had to be processed.

For the reasons cited herein, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied. Mr. Lawson has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated June 16, 2005, reference 01, is hereby reversed. Mr. Lawson was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Lawson has been overpaid \$1,670.00 in job insurance benefits.

cfc/kjw