

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM L BUSH
Claimant

APPEAL NO. 07A-UI-06252-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEAUTIFUL LAND PRODUCTS INC
Employer

**OC: 05/20/07 R: 04
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Beautiful Land Products, Inc. (employer) appealed a representative's June 14, 2007 decision (reference 01) that concluded Adam L. Bush (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 July 11, 2007. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Mary Hayek, Attorney at Law, appeared on the employer's behalf and presented testimony from one witness, David Sickles. Based on the evidence, the arguments of the employer, 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 15, 2007. He worked full time as a laborer at the employer's horticultural product production and wholesale distribution business. His last day of work was May 23, 2007. The employer discharged him on that date. The stated reason for the discharge was insubordination and failure to follow directions.

The business president, Mr. Sickles, had repeated discussions with the claimant about not leaving cigarette butts and used tissues lying around the properties. He frequently had stated to the claimant that his behavior and attitude needed to "shape up" if he was to stay in his employment.

On May 23, the claimant had not put air in the tire of a skid loader, resulting in the tire rolling off the rim. Mr. Sickles began working on fixing the tire and directed the claimant to assist. He told the claimant to get a handle for the tire jack, but the claimant brought back a rod that was not the jack handle. When Mr. Sickles told him it was the wrong part, the claimant tossed the rod

on some containers that were sitting against a wall. Mr. Sickles told the claimant to get the rod and put it away rather than tossing it to the side so that it might become lost, as other tools had disappeared. The claimant began arguing with Mr. Sickles, protesting against being accused of losing tools. This continued for several minutes, after which Mr. Sickles told the claimant to “quit arguing or leave.” The claimant retorted, “Do you want me to turn in my key?” to which Mr. Sickles responded that, “I think that would be best.”

The claimant established a claim for unemployment insurance benefits effective May 20, 2007. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,220.00.

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.

Iowa Code § 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.

The focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer’s interest, or
 2. The employee’s duties and obligations to the employer.

The employer sought to introduce information regarding the claimant’s conduct which it learned subsequent to the decision to discharge the claimant; however, as this information was not part of the basis of the employer’s decision to discharge the claimant; those concerns cannot now be used to establish misconduct. Larson v. Employment Appeal Board, 474 N.W.2d 570 (Iowa 1991). However, with the evidence presented of what the employer was aware of leading to the separation, the claimant’s insubordination and challenge to be discharged 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.

Iowa Code § 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.

Because the claimant’s separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative’s June 14, 2007 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of May 23, 2007. 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. The claimant is overpaid benefits in the amount of \$1,220.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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