

**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**

**RICK L THEIS
708 WALNUT ST
RICEVILLE IA 50466**

**MEYER GARAGE INC
2687 – 480TH ST
MCINTIRE IA 50455-8020**

**Appeal Number: 06A-UI-00887-RT
OC: 12-25-05 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, 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 Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Meyer Garage, Inc., filed a timely appeal from an unemployment insurance decision dated January 18, 2006, reference 01, allowing unemployment insurance benefits to the claimant, Rick L. Theis. After due notice was issued, a telephone hearing was held on February 9, 2006, with the claimant participating. Marty Adams, Owner, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

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: The claimant was employed by the employer as a full-time automotive technician from June 2001 until he was discharged on December 27, 2005. The claimant was discharged for refusing to do work he was told to do and for resisting technical training. On December 23, 2005, the employer's witness, Marty Adams, Owner, left a written note for the claimant to perform a certification on a used car preparing it for sale. The claimant did not do so. As a result, the claimant was discharged. The claimant testified that he did not see the note but did get a service ticket which said "Check over." However, the service ticket actually said "Check over for sale." Mr. Adams was not there personally to see to the work, but his son was, and his son did not see to the work and the car was not so certified. The claimant did check over the car but did not do the certification required for sale. In October 2005, the claimant was told to do a crankshaft seal for an oil leak. The claimant objected to doing so and told Mr. Adams that other technicians should do it because they needed to learn how to do things other than oil changes. There was a confrontation after work over this matter. Mr. Adams is the owner and boss and has the authority to assign work to automotive technicians. The claimant resisted this assignment and Mr. Adams eventually assigned it to another technician but during this confrontation gave the claimant a warning. In August several years earlier, Mr. Adams also had a confrontation with the claimant when the claimant initially refused to put an intake manifold gasket on a Montana van. The wife of Mr. Adams had asked the claimant to do so and the claimant refused, stating that he was paid to work on Saabs. However, eventually the claimant did put the gasket on the vehicle. This incident precipitated in a meeting between the claimant and Mr. Adams in which the claimant initially said he was quitting and went home early but returned the next working day and went back to work and Mr. Adams allowed him to work. The claimant received a verbal warning during this confrontation. The claimant received other verbal warnings in the year prior to his discharge for not following instructions.

Concerning the technical training, the claimant resisted the technical training because some of that was to be done on his own time without pay. Pursuant to his claim for unemployment insurance benefits filed effective December 25, 2005, the claimant has received unemployment insurance benefits in the amount of \$873.00 as follows: \$225.00 for benefit week ending December 31, 2005 (earnings \$180.00); and \$324.00 per week for two weeks, benefit weeks ending January 7, 2006 and January 14, 2006.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. 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 parties agree, and the administrative law judge concludes, that the claimant was discharged on December 27, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. Although it is a close question, the administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witness, Marty Adams, Owner, testified that the claimant was discharged for two reasons, refusing to do work that he was told to do and a constant "battle" with technical training, or the claimant's resistance to technical training. Concerning the refusal to do work as told, the evidence establishes that Mr. Adams left a written note for the claimant on December 23, 2005, to get a used car ready for sale or certify that used car. The claimant did not do so, and this caused the claimant's discharge. The claimant testified that he did not see the note but conceded that he received a service ticket but stated that all the service ticket said was to "Check over" the car. Mr. Adams credibly testified that the service ticket said "Check over for sale," meaning certify the car for sale. The administrative law judge concludes that there was enough information in that which the claimant concedes he had to put him on notice that he should have certified the car or at least inquired further and the claimant did not. Some fault here lies with the son of Mr. Adams who was in charge of the shop, but the bottom line here is that the claimant was given an assignment and he should have known what the assignment was but did not do it.

The evidence also establishes that in October 2005 the claimant refused to do a crankshaft seal for an oil leak, requesting that other technicians do it. The claimant concedes that he

refused to do this particular work even though it was assigned to him by Mr. Adams. When the claimant was asked why he did not just do what the boss said, the claimant responded "Yeah I guess." It appears to the administrative law judge that on this occasion the claimant deliberately refused an instruction, and this also lends some credibility to the testimony of Mr. Adams about the claimant's refusal to do work on December 23, 2005. There was a confrontation in October 2005 concerning the crankshaft seal and the claimant received a warning for disobeying instructions. The claimant also conceded that he received other verbal warnings in the last year about following the employer's instructions. There was also an incident several years ago in which the claimant refused to put in an intake manifold gasket upon the instructions of the wife of Mr. Adams. The claimant informed the wife of Mr. Adams that he did not do that work because he was paid to work on Saabs. However, the evidence establishes that when the claimant was hired he was told that he would have to work on other vehicles but that his work would mainly be on Saabs. The claimant should have known that he would have to work on other vehicles and apparently did so. This incident also resulted in a meeting with Mr. Adams and a verbal warning. The administrative law judge is constrained to conclude on the evidence here, although it is a close question, that despite verbal warnings about refusing to do work assigned to him, the claimant did willfully and deliberately refuse to do work assigned to him and that these refusals were deliberate acts or omissions constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evince a willful or wanton disregard of the employer's interests and are, at the very least, carelessness or negligence in such a degree of recurrence, all as to establish disqualifying misconduct.

Concerning the other reason for the claimant's discharge, his resistance to technical training, the administrative law judge concludes, although it is also a close question, that the employer has not demonstrated by a preponderance of the evidence that the claimant's resistance to technical training was disqualifying misconduct. Although initially Mr. Adams testified that the claimant would have been paid for this training, Mr. Adams did concede that some of this training was to be done on the claimant's own time without pay. The administrative law judge concludes that the claimant's resistance to such training does not rise to the level of disqualifying misconduct. Nevertheless, the administrative law judge concludes that the claimant's refusal to do tasks assigned to him was disqualifying misconduct, as discussed above.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant, until, or unless, he requalifies for such 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.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$873.00 since separating from the employer herein on or about December 27, 2005, and filing for such benefits effective December 25, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 18, 2006, reference 01, is reversed. The claimant, Rick L. Theis, is not entitled to receive unemployment insurance benefits until, or unless, he requalifies for such benefits, because he was discharged for disqualifying misconduct. He has been overpaid unemployment insurance benefits in the amount of \$873.00.

pjs/kjw