

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WALTER F KIENTOPF
Claimant

APPEAL NO: 06A-UI-09182-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BILL WHITTERS CONSTRUCTION
Employer

OC: 07/23/06 R: 04
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Bill Whitters Construction (employer) appealed a representative's September 11, 2006 decision (reference 04) that concluded Walter F. Kientopf (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known address of record, a telephone hearing was held on September 27, 2006. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Ryan Stanzel, the superintendent, appeared on the employer's behalf. 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.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on May 1, 2006. The employer hired the claimant as a full-time laborer with the understanding he had to satisfactorily complete a 90-day probation. After employees are hired, they receive an employee orientation packet. Information in the packets informs employees they cannot be late for work more than one time during probation. If an employee is late more than once, the employer will discharge the employee.

On August 1, the claimant was a minute late for work. On August 10, the claimant notified the employer at 7:10 a.m. he was in the employer's parking lot. He told the employer it had been raining too hard to get to work by 7:00 a.m. Other employees were at work before or by 7:00 a.m. The claimant and a co-worker he rode with went home. The employer called the claimant and he returned to work at 8:03 a.m.

On August 11, the claimant was nine minutes late for work. On August 11, the employer discharged the claimant because the claimant violated the employer's attendance policy for probationary employees.

The claimant established a claim for unemployment insurance benefits during the week of July 23, 2006. He reopened his claim the week of August 13, 2006. The claimant filed claims for the weeks ending August 19 through September 16, 2006. He received his maximum weekly benefit amount of \$360.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known he could not be late for work more than one time during his probationary period. Since the claimant did not participate in the hearing, it is not known why he was late for work three days. The employer did not know why the claimant went home on August 10 when he was in the employer's parking lot at 7:10 a.m. In this case, the claimant's failure to report to work as scheduled during his probation constitutes to work-connected misconduct. As of August 13, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending August 19 through September 16, 2006. The claimant has been overpaid \$1,800.00 in benefits he received for these weeks.

DECISION:

The representative's September 11, 2006 decision (reference 04) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of August 13, 2006, the claimant is not qualified to receive unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount, for

insured work, provided he is otherwise eligible. The claimant is not legally entitled to receive benefits for the weeks ending August 19 through September 16, 2006. The claimant has been overpaid and must repay a total of \$1,800.00 in benefits he received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs