

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN HILL
Claimant

APPEAL NO: 08A-UI-00286-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARTCRAFT INC
Employer

OC: 12-16-07 R: 02
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 7, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 18, 2008. The claimant participated in the hearing with Attorney Jeffrey Lipman. John Polzin, Accounting/Human Resources Manager; Steve Chopard, President; and Art Walters, General Manager; participated in the hearing on behalf of the employer with Attorney Tara Hall. Employer's Exhibit's One through Nine were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time salesperson for Artcraft from March 1, 1993 to December 14, 2007. The claimant was paid an eight percent commission on sales with the commission built in to the quotes. The claimant was experiencing declining sales and had lost two big clients in the last year and one-half. Due to his declining sales the claimant asked President Steve Chopard if he could add additional monies to the quote if the company could still be competitive and Mr. Chopard gave him permission to do so as long as the commission was built into the quote so the employer did not lose profits. He did not have permission to change the final billing statement. On December 14, 2007, the employer could not balance the claimant's books so he was confronted by Mr. Chopard, General Manager Art Walters and Accounting/Human Resources Representative John Polzin. They stated they wanted to clarify the situation and get the claimant's side of the story and the claimant said the MidAmerican Energy (Employer's Exhibit Two) and Iowa Methodist Medical Center (Employer's Exhibit Three) jobs and quotes were made in error but felt that the employer made "too much money" on job number 15576 for MidAmerican Energy (Employer's Exhibit Five) and consequently had the office girl add \$1,650.00 to his \$100.00 commission for a total of \$1,750.00 that was not built into the commission and reduced the employer's profits.. He admitted during his testimony that

he did not have the employer's permission to do so. During the meeting the claimant became very upset, and Mr. Chopard said he was stealing. The claimant asked if Mr. Chopard was calling him a thief and when Mr. Chopard said yes the claimant jumped up from his chair, threw down his glasses and said Mr. Chopard was a "god-damn liar" and no one was going to call him a thief and Mr. Chopard terminated his employment.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer allowed the claimant to add to his quotes to increase his commissions on accounts they felt would bear an increase. While the claimant may have made simple errors on two of those billing statements, the third increase was not an error and the claimant stated he felt the employer was "making too much money" on that account. He changed the invoice costing the employer \$1,650.00 in profits. He was not authorized to change the sales amount or the final billing statement because it cuts into the

employer's profit and operating expenses. The claimant admits taking an extra \$1,500.00 without securing the employer's permission and agrees he was not entitled to that money. While the claimant may not have considered that theft, it was at least dishonest and he knew or should have known with his experience what was acceptable and what was not and he admitted he knew he was not entitled to the money. Consequently, under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

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.

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 January 7, 2008, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,202.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs