

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN F HUBER
Claimant

APPEAL NO. 08A-UI-05412-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A W WELT AMBRISCO INSURANCE INC
A W WELT AMBRISCO INSURANCE
Employer

OC: 04/27/08 R: 03
Claimant: Respondent (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Code Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

A. W. Welt Ambrisco Insurance filed a timely appeal from the April 27, 2008, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on June 23, 2008. Claimant Brian Huber participated. Craig Welt, President, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit One into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Brian Huber was employed by A. W. Welt Ambrisco Insurance as a full-time producer from October 2007 until April 14, 2008, when Craig Welt, President, discharged him from the employment. Mr. Huber's supervisor was Craig Schroeder, Vice President for Sales. The employer is an insurance firm that markets various insurance products to businesses and individuals. Mr. Huber's employment in the field required a professional license issued by the State of Iowa. Mr. Huber and the employer each had a fiduciary responsibility to the clients they served.

The employer had several concerns about Mr. Huber's work performance and professional ethics throughout the employment that ultimately prompted the employer to further investigate Mr. Huber's credentials. The employer had hired Mr. Huber based, in large part, on a reference received from a professional colleague. On the résumé Mr. Huber submitted in application for a position with the employer, Mr. Huber indicated that he had earned a Bachelor of Business Administrative (B.B.A.) from the University of Iowa in 1997. Ms. Huber also indicated on the résumé that he had graduated with a 3.25 grade point average.

On April 9, 2008, Mr. Schroeder contacted the University of Iowa Degree Verifications personnel to determine whether Mr. Huber had in fact attended or graduated from the University of Iowa. Mr. Schroeder received reliable information indicating that Mr. Huber had neither attended nor graduated from the University of Iowa. On April 10, Mr. Welt contacted the University of Iowa Degree Verifications personnel and received information identical to the information Mr. Schroeder had received. Mr. Huber had in fact falsified his academic credentials on the résumé he submitted to obtain the employment. Mr. Huber has attended a community college, but has neither attended nor graduated from a four-year college or university. When the employer confronted Mr. Huber about the falsification on his résumé, Mr. Huber's only comments were, "So," and "Is that all you have on me?"

REASONING AND CONCLUSIONS OF LAW:

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 proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Workforce Development rule 871 IAC 24.32(6) provides as follows:

False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

The present case does not involve a false statement made on an Application for Work form. The Workforce Development representative's reliance on the Administrative Code provision applicable to false statements on an Application to Work form to allow benefits was in error. An Application for Work form is a boilerplate document the employer provides and the prospective employee completes by providing information in direct response to the employer's boilerplate questions. In fundamental contrast, a professional résumé is a highly personalized document crafted entirely by the job seeker to highlight the job seeker's achievements and credentials. Even if the administrative law judge were to conclude that the administrative rule does apply, the Workforce Development representative's decision would still be in error. The weight of the evidence in the record indicates that Mr. Huber perpetrated a fraud upon the employer to gain employment he believed would not be offered to him unless he indicated that he held a college degree. Mr. Huber's fraud was not only perpetrated upon the employer, but was also perpetrated upon the employer's clients. The employer's clients had a right to rely upon both Mr. Huber's representation and the employer's representation of Mr. Huber's credentials, including Mr. Huber's academic credentials. Mr. Huber had represented that he had graduated with a respectable grade point average from a nationally ranked business school. Mr. Huber had a fiduciary responsibility to the employer and to the employer's clients. The very essence of a fiduciary relationship is the preservation of confidences or trust. Mr. Huber's fraudulent act struck at the very base of his trust relationship with the employer and with the employer's clients and indicated moral turpitude.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Huber was discharged for misconduct. Accordingly, Mr. Huber is disqualified for benefits until 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 employer's account shall not be charged for benefits paid to Mr. Huber.

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 Mr. Huber has received benefits for which he has been deemed ineligible, those benefits constitute an overpayment that Mr. Huber must repay. Mr. Huber is overpaid \$1,388.00.

DECISION:

The Agency representative's April 27, 2008, reference 02, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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