

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TANNER S RASH
Claimant

APPEAL NO. 11A-UI-10241-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HNI SERVICES LLC
Employer

OC: 07-03-11
Claimant: Respondent (2R)

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 25, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 20, 2011. The claimant did participate. The employer did participate through Tammi Drawbaugh, Member and Community Relations Generalist. Employer's Exhibit One was entered and received into the record.

ISSUES:

Was the claimant discharged due to job-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an intern full time beginning May 31, 2011 through June 23, 2011 when he was discharged. As an intern the claimant was living in a dorm room at the Muscatine Community College which was being paid for by the employer. When the claimant was granted the paid internship he signed off on a housing agreement agreeing that he would not smoke in the room nor would he drink alcohol in his dorm room. The claimant snuck a six pack of beer into his dorm room and drank in his room in violation of the clear policy forbidding drinking alcohol in his room. Additionally, the claimant was not allowed to smoke cigarettes in his room but did so anyway. When workers for the community college entered the room they discovered the ashtray full of cigarette butts and empty beer cans. Prior to this event the claimant had attended a meeting where Ms. Drawbaugh made it clear that all interns were expected to comply with the housing regulations and no matter what their age. The claimant knew that the employer expected him to comply with the housing regulations. When the employer found out that the claimant had violated the housing policy and was being kicked out of the dormitory, he was discharged for his failure to follow the rules and regulations. The employer's policy requires the claimant to be honest in his dealings with them and others. The claimant clearly knew he was to follow the rules of the housing agreement but did not do so. The claimant admitted in an

email to teacher that his actions could make it more difficult for other interns to get into the program.

The claimant has received unemployment benefits after the separation on a claim with an effective date of July 3, 2011.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant absolutely knew that he was not to smoke cigarettes or drink alcohol in his room but did so anyway. His actions are conduct that are not in the employer's best interests as they may now have a more difficult time finding housing for their interns. The claimant knew or should have known that he was obligated to follow the housing rules. The employer can reasonably infer that the claimant's disregard of rules he clearly knew he was to follow were actions not in their best interests. The claimant was discharged for his own actions, which are sufficient misconduct to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits.

DECISION:

The July 25, 2011 (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.

REMAND: The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css