

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DOUGLAS B RIESBERG**  
Claimant

**APPEAL NO. 11A-UI-09754-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BOEHRINGER INGELHEIM LTD  
ANIMAL HEALTH INC**  
Employer

**OC: 06/05/11  
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Animal Health, Inc., filed an appeal from a decision dated June 24, 2011, reference 01. The decision allowed benefits to the claimant, Douglas Riesberg. After due notice was issued, a hearing was held by telephone conference call on August 16, 2011. The claimant participated on his own behalf. The employer participated by Associate Director of Human Resources David Seales.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Doug Riesberg was employed by Animal Health from March 19, 2007 until May 4, 2011 as a full-time field swing sales person. Every year the employer has all employees read and sign the code of ethics policy. Mr. Riesberg customarily signed without reading the code first.

On or about April 20, 2011, a potential customer, Mr. Kenkle, notified Supervisor Dave Gocken, he had done business with Mr. Riesberg in the past. There was no company record of any business transactions with his business and so Mr. Kenkle forwarded a cancelled check from July 2009, he had written directly to the claimant for a product called Ingelvac.

The company policy and code of ethics prohibits “side transactions.” This is where product is sold directly to a customer by a sales person without going through the proper channels of sending an order to the central supply, with invoices produced and payment made directly to the company. On April 28, 2011, Mr. Gocken met with Mr. Riesberg to question him about his business dealings with Mr. Kenkle. Initially the claimant said he had first done business with this person in 2010 but when the cancelled check was produced, he changed his answer. He provided a written statement in which he admitted he had sold his “demonstration” product to Mr. Kenkle but maintained it was only to fund his portion of a benefit event sponsored by one of his regular customers.

The employer does allow for sales people to be advanced, or reimbursed, money spent on certain events hosted by regular customers but the claimant did not go through these channels, funding his portion with the money paid directly to him by Mr. Kenkle. Mr. Riesberg was suspended after the April 28, 2011, meeting for the employer to continue the investigation. The claimant's former supervisor, Tom Grady, was questioned and he denied he had ever given approval to any of his sales peoples to sell product directly to a customer and have the check issued to them rather than the company. The employer consulted with corporate and independent counsel and discharged the claimant by phone on May 4, 2011.

Douglas Riesberg has received unemployment benefits since filing a claim with an effective date of June 5, 2011.

#### **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 claimant knew, or should have known had he read the code of ethics, he was not to sell directly to a customer. All orders were to be processed through company channels of ordering, invoicing and accounts receivable. Whatever Mr. Grady had said to the claimant which caused him to believe he could bypass these procedures is not clear. But such procedures are contrary to the employer's proper business practices. The claimant's conduct was a violation of the

duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. He is disqualified.

Iowa Code section 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.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of June 24, 2011, reference 01, is reversed. Douglas Riesberg is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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