

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ADAM L BARGER
Claimant

COUNTRY LANDSCAPES INC
Employer

APPEAL NO. 14A-UI-07778-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/06/14
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 24, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 26, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Rhett Faaborg participated in the hearing on behalf of the employer.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits and is he required to repay an overpayment?
Is the employer subject to charge for benefits paid?

FINDINGS OF FACT:

The claimant worked full time for the employer as a landscaper from August 19, 2013, to June 25, 2014. His supervisor was Charles Johnson. Rhett Faaborg is the owner.

At the end of the workday on June 23, 2014, the claimant and another employee began wrestling at the jobsite. The other employee had pushed the claimant and then tackled him. The claimant ended up putting the other employee in a forceful chokehold until the employee "tapped out" indicating he was giving up. This was not a hostile fight done with the intent to injure or harm the other party but had the potential for harm. This was done in the presence of Johnson, who said nothing to either the claimant or the other employee.

Johnson reported the incident to Rhett Faaborg. Faaborg informed the claimant on June 25, 2014, that he was being discharged for fighting with a coworker.

The claimant filed for and received a total of \$1,148 in unemployment insurance benefits for the weeks between July 6 and August 2, 2014. Rhett Faaborg and the claimant both participated in the fact-finding interview and presented evidence about the reasons for the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's actions on the worksite in wrestling with a coworker on the jobsite were deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees and constitute work-connected misconduct under the law. The fact that the claimant did not have malicious intent does not change the outcome here. The coworker was placed in forceful chokehold until he tapped out. There was a potential of harm that the claimant should have realized.

The unemployment insurance law generally requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. But a claimant is not required to repay an overpayment when an initial decision to award benefits on an employment-separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$1,148 in benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer's account will not be charged for benefits.

DECISION:

The unemployment insurance decision dated July 24, 2014, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$1,148.00 in unemployment insurance benefits, which must be repaid. The employer's account will not be charged for benefits

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs