

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LOUIS STELLA
APT B
2762 E 53RD ST
DAVENPORT IA 52807

DAHL MOTORS DAVENPORT INC
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 05A-UI-12269-HT
OC: 11/06/05 R: 04
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge
Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer, Dahl Motors, filed an appeal from a decision dated November 29, 2005, reference 01. The decision allowed benefits to the claimant, Louis Stella. After due notice was issued, a hearing was held by telephone conference call on December 21, 2005. The claimant participated on his own behalf. The employer participated by General Sales Manager Tim Thompson and was represented by Employers Unity in the person of Diana Perry-Lehr. Exhibit One was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Louis Stella was employed by Dahl Motor from September 2 until October 17, 2005. He was a full-time business manager.

The claimant's job responsibilities included using a checklist to make sure all of the required forms are in the file. This facilitates in securing the financing for the vehicles and for sending in the licensing request to the state of Iowa. The claimant knew these checklists existed but considered them only to be a training tool and felt he did not need to use them.

On October 1, 2005, General Sales Manager Tim Thompson told the claimant he had to start using the checklists. The dealership had had delays in getting the necessary financing because the required documents were not in the files. In addition, fines had had to be paid due to delays in getting the licensing requests to the state. Mr. Thompson told the claimant he would be subject to further discipline if, after he returned from vacation, Mr. Stella had not started using the check lists on all transactions.

When Mr. Thompson returned from vacation on October 17, 2005, he had the office staff pull the folders for all deliveries done by Mr. Stella. There were approximately 20 of them and the checklist had not been used in any of them. The dealership had to pay fines and penalties and did have a cash flow problem because of the delay in securing financing. The claimant was discharged that day, and his only explanation was that he had "forgotten" to use the checklist.

Louis Stella has received unemployment benefits since filing a claim with an effective date of November 6, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had been advised his job was in jeopardy as a result of his failure to use the checklist for every vehicle he delivered. Mr. Stella denies being told he had to use the checklist but he knew such documents existed from his prior work experience. However, he did not feel he needed to use them, because he considered them only to be a training tool. His assertion that he knew what he was doing is not supported by the record, as the employer had cash flow problems and state imposed fines to pay because of incomplete paperwork in the folders.

Mr. Stella also denies being told he had to use the checklist, but the separation notice he signed specifically mentioned the prior warning and he did not disagree with the assertion when he made his employee comment. The record does establish the claimant willfully failed to follow the company procedures and the instructions of his supervisor, resulting in financial loss to the employer. This is conduct not in the best interests of the employer and the claimant is disqualified.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of November 29, 2005, reference 01, is reversed. Louis Stella is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$1,685.00.

bgh/kjw