

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SPOMENKO MIJATOVIC**  
Claimant

**APPEAL NO. 07A-UI-07456-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEEF PRODUCTS INC**  
Employer

**OC: 06/24/07 R: 03**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated July 24, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 6, 2007. The parties were properly notified about the hearing. The claimant provided a telephone number to call for the hearing but did not answer the telephone at that number at the time of the hearing and did not participate in the hearing. Jennifer Stubbs 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?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a production worker from July 17, 2003, to June 1, 2007. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to discharge if they received 14 attendance points during a 12-month period. Employees receive one point for an unscheduled absence and one-half point for an unscheduled tardiness or leaving work early. Employees receive three points if they do not properly report their absence 30 minutes before the start of their shift.

The claimant had received a written warning on March 30, 2007, because he had been absent from work without notice to the employer on March 28, which gave the claimant ten and one-half points. He had also been absent without notice on July 2, 2006.

The claimant was absent from work on June 2, 2007, and did not provide proper notice that he was going to be absent. He called in sick on June 3. He received three points for his absence on June 2 and one point on June 3.

The claimant was discharged for excessive absenteeism on June 4, 2007, because he had received 14.5 points after his absences on June 2 and 3, 2007.

The claimant filed for and received a total of \$3,340.00 in unemployment insurance benefits for the weeks between June 24 and September 1, 2007.

### **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.

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's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. He had been warned about missing work without proper notification to the employer and knew that his job was in jeopardy because of his excessive absenteeism.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$3,340.00 in unemployment insurance benefits for the weeks between June 24 and September 1, 2007.

**DECISION:**

The unemployment insurance decision dated July 24, 2007, 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 \$3,340.00 in unemployment insurance benefits, which must be repaid.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/css