

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALFUNZO BROWN

Claimant

APPEAL NO. 09A-UI-18898-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAMBRIDGE TEMPOSITIONS INC

Employer

OC: 11/15/09

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct

Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Cambridge Tempositions, Inc. filed an appeal from a representative's decision dated December 15, 2009, reference 01, which held that no disqualification would be imposed regarding Alfunzo Brown's separation from employment. After due notice was issued, a hearing was held by telephone on January 28, 2010. The employer participated by Elaine Pruett, Account Manager. Mr. Brown did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Brown was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Brown's most recent employment with Cambridge Tempositions, Inc. began on September 25, 2009. He was assigned to work full-time hours at Quality Chef Heinz. He was discharged from the assignment after he reported to work under the influence of alcohol on October 8.

The employer's client reported that Mr. Brown smelled of alcohol, had bloodshot eyes, and had problems talking. It was also reported that he tried to pick a fight with a coworker and was acting in a "bizarre" manner. Mr. Brown reported to the Cambridge Tempositions, Inc. office on October 9. It was noted that he smelled of alcohol and could hardly stand. He had difficulty walking and talking. He was told he needed to get control of himself and then left the building.

Mr. Brown filed a claim for job insurance benefits effective November 15, 2009. He has received a total of \$2,660.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

When Mr. Brown filed his claim for job insurance benefits, he was unemployed because he had been discharged from his temporary assignment. An individual who was discharged from

employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Brown was discharged because he reported to work under the influence of alcohol.

The employer did not present testimony from any individual who observed Mr. Brown at work on October 8. The employer witness who participated in the hearing did personally observe him when he was at the employer's business on October 9. Her testimony established to the satisfaction of the administrative law judge that Mr. Brown was, in fact, under the influence of alcohol on October 9. The employer's testimony lends credence to the allegations made by Quality Chef Heinz regarding October 8.

An employer has the right to expect that employees will report to work free from the influence of alcohol or other drugs. Individuals who are at work while under the influence of alcohol pose a safety risk to themselves as well as to other employees. Mr. Brown's conduct posed not only a safety risk but also jeopardized his employer's working relationship with Quality Chef Heinz. He knew or should have known his conduct was contrary to the employer's standards and expectations. For the reasons cited herein, it is concluded that disqualifying misconduct has been established and benefits are denied.

Mr. Brown has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated December 15, 2009, reference 01, is hereby reversed. Mr. Brown was discharged for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Brown will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs