

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN J POTTER
Claimant

APPEAL NO. 09A-UI-17114-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLEMONS INC
Employer

OC: 10/18/09
Claimant: Respondent (2-R)

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 November 5, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 17, 2009. The parties were properly notified about the hearing. The claimant did not participate in the hearing, but sent in a written statement in lieu of testifying. Jason Reese participated in the hearing on behalf of the employer with a witness, Lisa Cooper. The claimant's statement was admitted into evidence as Claimant's Exhibit A. Employer's Exhibit 1 was also admitted.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked as a car salesperson for the employer from September 15, 2008, to October 14, 2009. The claimant had received warnings for: (1) excessive personal phone calls (December 5, 2008), (2) miscommunicating what a customer's trade in was worth (May 18, 2009), (3) charging \$46.20 in gas to the employer's account to fill the tank of a used car instead of the three gallons set by the employer's rules (September 25, 2009), and (4) for failing to follow instructions requiring him to get contact information from every customer he had talked to (October 2, 2009). On October 2, 2009, he was informed that his job was jeopardy if he failed to follow instructions again.

On October 14, 2009, the claimant informed a customer that he could get an interest rate of 4.9 percent from the employer. The claimant had been instructed not to discuss the interest rate with customers, but instead to refer such questions to the finance manager. The customer became upset when he could not get the financing that he expected.

The employer discharged the claimant on October 14, 2009, for repeated instances of failing to follow instructions and rules.

The claimant filed for and received a total of \$2,648.00 in unemployment insurance benefits for the weeks between October 18 and December 12, 2009.

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 section 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 repeated violation of rules and instructions 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.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated November 5, 2009, 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 matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs