

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEREK P KNEDLER
Claimant

APPEAL NO. 07A-UI-06945-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALTORFER INC
Employer

**OC: 06/17/07 R: 12
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Altorfer, Inc., filed an appeal from a decision dated July 10, 2007, reference 01. The decision allowed benefits to the claimant, Derek Knedler. After due notice was issued, a hearing was held by telephone conference call on July 31, 2007. The claimant participated on his own behalf. The employer participated by Human Resources Manager Eric Driessen, Bettendorf Manager Corey Gordon, Shop Supervisor Emilio Morris, Shop Mechanic Brad Wray, and Field Mechanic David Courtney. Exhibits One, Two, Three, and Four were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Derek Knedler was employed by Altorfer, Inc., from October 17, 2005 until April 6, 2007, as a full-time outside sales representative. He had received several verbal warnings from Manager Corey Gordon about various aspects of his work performance and job quality, attendance, and misuse of the company credit card. He was advised his job was in jeopardy if there were any further incidents.

On April 4, 2007, the claimant brought in a John Deere mower on a trailer, which he parked on company premises. Altorfer, Inc. sells Caterpillar equipment, and John Deere is a major competitor. Mr. Knedler was attempting to sell the mower to co-workers and, when told by Shop Supervisor Emilio Morris to move it off company property, he merely moved it away from the building but left it on company property, stating he had a customer coming later in the day to look at it. The mower allegedly belonged to a friend of the claimant's, but he could not provide an explanation as to why the mower could not be inspected by potential buyers at his home or the home of his friend.

Soliciting co-workers or other business during work time is a dischargeable offense under the company policy. Mr. Knedler did receive a copy of the employee handbook, which sets out these provisions.

Derek Knedler has received unemployment benefits since filing a claim with an effective date of June 17, 2007.

REASONING AND CONCLUSIONS OF 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 had been advised his job was in jeopardy as a result of his poor work performance, violating of company rules, and misuse of company assets. In spite of the warning, the claimant blatantly violated another company policy by attempting to sell a mower allegedly belonging to a friend, on company premises, during company time, and to co-workers. His explanation as to why he was doing it this way is unconvincing. There is nothing which would have prevented the sale of this mower on his own time or on his own property. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and constitutes misconduct. 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 July 10, 2007, reference 01, is reversed. Derek Knedler 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 \$1,800.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw