

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUCIUS WILLIAMS
Claimant

APPEAL NO: 07A-UI-01144-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES
Employer

**OC: 12/31/06 R: 04
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Temp Associates (employer) appealed an unemployment insurance decision dated January 26, 2007, reference 01, which held that Lucius Williams (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 15, 2007. The claimant participated in the hearing. The employer participated through Mike Thomas, Account Manager and Ellen Lentz, On-Site Coordinator for Temp Associates for Monsanto. Employer's Exhibits One through Three were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time supervisor for a janitorial crew at Monsanto from July 28, 2005 through January 2, 2007 when he was discharged for disregarding the employer's directives. The on-site coordinator at Monsanto, Ellen Lentz, had heard numerous complaints from Monsanto employees and temporary employees that the claimant and another employee, Regina Anderson were always in the recreation room. There was another employee assigned to clean the rec room and it was not a room that was used on a daily basis. After hearing enough complaints, Ms. Lentz pulled the claimant's and Ms. Anderson's time punches and confirmed that both employees were leaving and returning to the department at the exact same time on numerous occasions. They had identical punches leaving and returning on November 15, 16, 17, 21, and 29, 2006. There was no reason both employees needed to be in the rec room together and there were complaints that Ms. Anderson was not getting her work done. Ms. Lentz heard from a security guard that the claimant and Ms. Anderson played pool in the rec room. The claimant explained that they went into that room to clean but Ms. Lentz advised him not to take Ms. Anderson to the rec room with him and that it was not necessary for him to go to the rec room very often. After the warning, the claimant and Ms. Anderson again punched out and back in again at identical times on December 15, 21, and 29.

The other problem that prompted the discharge was the claimant's refusal to follow the employer's directives with regard to ordering supplies. He was specifically advised not to order any supplies without going through the central change department at Monsanto. The employer became aware of an email dated December 21, 2006 which confirmed the claimant had ignored that directive, since he ordered supplies without going through the appropriate department.

The claimant filed a claim for unemployment insurance benefits effective December 31, 2006 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for repeatedly failing to follow the employer's directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The claimant had been directed not to order supplies without going through the central change department but did so anyway on December 21, 2006. He also ignored the directive not to take Ms. Anderson with him to the rec room. The claimant's explanations are not found as credible as the employer's evidence.

First of all, the employer only checked into the claimant's and Ms. Anderson's time punches as the result of complaints from other employees. The time cards verified their activity and Ms. Anderson had no reason to go to the rec room, especially when she could not get her own work done. If the claimant was merely doing his job as he claims, his activities would not have been questioned. The employer has met its burden. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated January 26, 2007, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,670.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs