

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEONARD W MORGAN

Claimant

APPEAL NO. 08A-UI-04556-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEIGHBORHOOD PATROL INC

Employer

**OC: 04/06/08 R: 02
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated May 7, 2008, reference 04, which held claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on May 28, 2008. The claimant failed to respond to the hearing notice and did not participate. The employer participated by David Lee, Operations Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from September 11, 2007 until April 25, 2008 when he was discharged for failure to report or to provide notification to the employer. Mr. Morgan was employed as a full-time security officer and was paid by the hour. His supervisor was David Lee.

The claimant was discharged based upon a series of events that took place at a training location where he had been assigned. Mr. Morgan was assigned to begin at Grandview College as a trainee on April 22, 2008. The claimant reported on that date but left work early the following day, April 23. The claimant called in sick on April 24 and 25. Although the claimant was scheduled to work he did not report or provide any notification to the employer of his impending absences or the reasons therefore. Mr. Morgan did not comply with the company's policy to remain in contact with the company or to call in. The company heard nothing further from Mr. Morgan for several days. The claimant was aware that under established company policies he was required to notify the employer of impending absences and was required to maintain contact with the employer to accept assignments.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the claimant was discharged under disqualifying conditions. It does. The evidence in the record establishes that Mr. Morgan was aware of the company policy which required him to notify the employer of impending absences and also required the claimant to maintain contact with the employer so he could report for scheduled assignments. The evidence in the record establishes that although aware of the policy, the claimant failed to report for scheduled work for two or more consecutive days and did not provide notification to the employer as required. The claimant did not comply with the requirement that he maintain contact with the company for several days. Based upon the claimant's violation of a known company policy, he was discharged from employment.

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.

For the reasons stated herein the administrative law judge concludes that the claimant was discharged for misconduct in connection with his work. Mr. Morgan although duly notified did not respond to the hearing notice and provided no evidence in this matter.

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. Claimant is overpaid benefits in the amount of \$1,107.00.

DECISION:

The representative's decision dated May 7, 2008, reference 04, is hereby reversed. Claimant was discharged for misconduct in connection with his work. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided that he is otherwise eligible. Claimant is overpaid unemployment insurance benefits in the amount of \$1,107.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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