

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

STEVEN A SMITH  
623½ W 8<sup>TH</sup> ST  
DUBUQUE IA 52001

BEST BUY STORES  
C/O EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000

Appeal Number: 05A-UI-06887-CT  
OC: 05/29/05 R: 04  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Best Buy Stores filed an appeal from a representative's decision dated June 24, 2005, reference 02, which held that no disqualification would be imposed regarding Steven Smith's separation from employment. After due notice was issued, a hearing was held by telephone on July 21, 2005. Mr. Smith participated personally. The employer participated by Michael Rozic, General Manager, and was represented by Kay Neal of Employers Unity. Exhibits One through Fourteen were admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Smith was employed by Best Buy Stores from November of 2003 until May 31, 2005. He was last employed full time as a supervisor in car audio installation. On May 5, 2005, he damaged a customer's car while making an installation. The damage was brought to his attention when the customer returned to the store approximately 30 minutes after the installation was completed. Mr. Smith advised the customer that Best Buy would pay for the damage. He did not immediately notify any manager that the damage had occurred. The employer's procedure is to have the customer file a claim for the damage so the matter can be handled by the employer's insurance carrier. Mr. Smith had been verbally warned in August of 2004 that he was to notify a manager if a vehicle was damaged during an installation.

The employer did not learn of the May 5 damage until May 19, when Mr. Smith notified Lindsey Hancock, a manager. Ms. Hancock told him he needed to notify the general manager, and Mr. Smith agreed to do so. On May 22, Mr. Smith again approached Ms. Hancock about the matter. At that point, the customer had brought in a bill for \$385.02 to cover the damage. Mr. Smith wanted Ms. Hancock to handle the matter by paying the customer rather than involving the general manager. Ms. Hancock declined to do so and turned the matter over to the general manager. Because the customer was upset, the general manager paid the bill from the store's assets rather than having a claim filed with the insurance carrier.

In making the decision to discharge, the employer also considered the fact that Mr. Smith had been less than truthful when advising the employer of a tardiness problem involving an employee who worked under him. The employee, Jason Brooks, had received warnings about tardiness on May 10 and May 11. The general manager noted that he was again late on May 13 and directed Mr. Smith to speak to him. Mr. Smith later told the general manager that Mr. Brooks was not late on May 13 but had been waiting in the installation bay for someone to unlock the door for him. The general manager spoke to Mr. Brooks, who indicated that he had, in fact, been late to work on May 13. Mr. Smith later acknowledged that he had given false information to the general manager in order to preserve Mr. Brooks' employment.

Mr. Smith has been paid a total of \$783.00 in job insurance benefits since filing his claim effective May 29, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Smith was separated from employment for any disqualifying reason. 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). Part of the reason for Mr. Smith's discharge was the fact that he failed to immediately notify a manager that a vehicle had sustained damage when he worked on it. The damage occurred on May 5, but he did not notify anyone in management until May 19. If the correct procedure had been followed, the employer would have had two weeks to have its insurance carrier investigate the matter. Mr. Smith led the customer to believe that Best Buy would pay for the damages but did not have the customer complete a claim form. When the customer presented the bill on May 22, the employer felt it necessary to make payment from store funds rather than have the customer wait for the normal procedure through the insurance company. If the proper procedure had been followed, Best

Buy would not have had to make direct payment as the insurance carrier would have covered the expense.

The administrative law judge does not believe Mr. Smith intended to hide the damage from the customer. The damage, small scratches in an out-of-the way area, may well have not been visible to him at the time of the repairs. However, he did attempt to hide the damage from his general manager by not reporting the matter timely and by seeking to have the amount paid to the customer without the general manager's knowledge. In addition to being less than forthcoming about the damage issue, Mr. Smith also lied to his general manager about whether Mr. Brooks was late to work on May 13. He could have asked the general manager to be lenient with Mr. Brooks in order to salvage his employment but instead chose to lie about the fact that Mr. Brooks was again late after a final warning.

After considering all of the evidence, the administrative law judge concludes that the conduct complained of by the employer is sufficient to establish a substantial disregard of the employer's interests and standards. Accordingly, benefits are denied. Mr. Smith has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated June 24, 2005, reference 02, is hereby reversed. Mr. Smith was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Smith has been overpaid \$783.00 in job insurance benefits.

cfc/kjw