

**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**

**BRETT GRIGGS  
PO BOX 5601  
CORALVILLE IA 52241**

**GOVERNMENT EMPLOYEES INS CO  
GEICO  
c/o EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000**

**Appeal Number: 05A-UI-08166-BT  
OC: 07/10/05 R: 03  
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 - Overpayment

STATEMENT OF THE CASE:

Government Employees Insurance Company (employer) appealed an unemployment insurance decision dated August 5, 2005, reference 01, which held that Brett Griggs (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 August 25, 2005. The claimant participated in the hearing with former employee Michael Cavitt. The employer participated through Tina Keuter, Human Resources; Susan Sissel, Supervisor; and Employer Representative Kay Neal. Employer's Exhibits One through Three were admitted into evidence.

#### 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 customer service representative from August 19, 2002 through July 12, 2005. He was discharged for repeated call avoidance which is a violation of a known company rule. The employer monitored the claimant's calls on July 8, 2005 and noted questionable behavior which appeared to be an attempt to avoid calls. Employees can log into "call work" when they need a few extra minutes to complete paperwork for a call just completed. When an employee goes into this mode, he goes to the back of the line with regard to accepting calls. The claimant went into "call work" four times that day for a couple minutes each without following another call. He also dialed an internal company number four times but did not wait for someone to answer and did not call back that department to speak to someone.

After looking at the summary of the claimant's calls that day, his supervisor requested copies of records from other days to make sure that this was not simply an isolated incident or that it did not occur on only one day. The supervisor reviewed June 27, June 28, June 30 and July 1 and there was a similar pattern on each of these days. In addition to going to the "call work" mode, the claimant would also go into the "unavailable" mode for a matter of seconds, which would also place him at the end of the line for receiving calls. The supervisor looked at July 9 and the pattern was the same. The claimant was brought into the office on July 12 and asked to explain his actions. He claimed that he would go into "call work" time after breaks and lunch so that he could go get a drink. The employer gave the claimant the rest of the day to offer an explanation and when he was unable to do so at the end of the day, he was discharged.

The claimant filed a claim for unemployment insurance benefits effective July 10, 2005 and has received benefits after the separation from employment in the amount of \$1,491.00.

#### 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 § 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 after the employer discovered he repeatedly avoided taking calls, which violates the employer's work policies. The employer looked at numerous days to determine whether he did this one-day only or if he did it more often and the records were conclusive that he acted to avoid taking calls on a regular basis. The claimant denied all wrongdoing and offered numerous explanations, but the evidence is unequivocal. He was not issued a warning as it was clear that it was not an isolated incident. The claimant's violation of a known work rule 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 not 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 August 5, 2005, 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 \$1,491.00.

sdb/s