

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANK R WEBER
Claimant

APPEAL NO. 07A-UI-04637-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS DAIRY INC
Employer

OC: 04-08-07 R: 01
Claimant: Respondent (2)

Iowa Code section 96.5(2)a – Discharge/Misconduct
Section 96.3-7 - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 26, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 21, 2007. The claimant did participate. The employer did participate through Christine Comstock, Human Resources Manager and was represented by Michelle Igney of TALX UC eXpress. Employer's Exhibit One was received.

ISSUES:

Was the claimant discharged for work related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a lube technician full time beginning January 14, 1987 through April 11, 2007 when he was discharged.

The claimant was discharged for taking too long on breaks. On Monday April 9, 2007 the claimant punched out for his lunch break and then punched back in when he was required to do so, but instead of returning to his work site, he and another employee remained in the break room sitting and talking. The claimant did not have permission to take a longer break. When working a full shift, employees are given a 15-minute paid break in the morning and afternoon and a ½ hour unpaid meal break during the approximate middle of their shifts.

The claimant admitted to taking too long of a break on Monday April 9, 2007 and had no explanation for why he did so. He also admitted that he had been verbally warned by the supervisor about taking too long on his break. When the claimant was told he was being discharged he also admitted taking too long on his lunch break. The claimant worked shorter shifts on the weekends where he did not take a lunch break. The claimant argued that because he took shorter breaks on the weekend, he should be allowed to take longer breaks on the

weekdays. There is no support for the claimant's argument in the company handbook. The claimant also punched in after his 30-minute break, indicating he knew that he was not to take any longer than 30 minutes. The claimant had been suspended in September 2006 for sleeping on the job. Because he had previously been suspended, the claimant was discharged when the employer discovered he was staying at break longer than he should have been.

The claimant was observed taking too long on break on April 6 as well as April 9.

The claimant has received unemployment benefits since filing a claim with an effective date of April 8, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 claimant was taking too long on break and had been warned about it prior to his discharge. Taking too long on break amounts to stealing time from the employer. The claimant knew that his break was to be limited to 30 minutes yet he admits he took longer than he was supposed to even after he had been warned about taking too long on break. The claimant's actions, that is taking a longer break than was authorized, constitutes disqualifying misconduct. 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 April 26, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs