

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

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Appeal Number: 05A-UI-08614-H2T
OC: 06-26-05 R: 12
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

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 August 10, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 15, 2005. The claimant did participate. The employer did participate through Rod Warhank, Associate Manager for Human Resources in Operations. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an hourly employee packer/placer production worker full time beginning August 13, 1993 through July 7, 2005 when he was discharged.

On June 22, 2005, the claimant was working in the pack or extra pack position and was responsible for checking to insure that the package ingredients matched the package film. The claimant admitted he had been trained on how to make the checks required and it was a job he had done correctly in the past. At both 21:00 and 22:00 hours the claimant initialed the check off sheet and wrote "pass" to indicate that the correct ingredients were being placed into the package containing the correct front film cover. At hearing the claimant admitted that on June 22 he did initial the check off sheets but he did not make the required checks. Had the claimant made the checks he would have discovered that the wrong film was being placed on the product. The only excuse offered by the claimant was that he was not the person who loaded the wrong film in the machine, so he should not have been held responsible for the error. The employer intentionally builds into the production line multiple checks by employees so that errors made by other employee can be discovered as soon as possible to avoid loss of saleable product. The claimant was not discharged because the wrong film was loaded on the packing machine but because he specifically and intentionally did not make the required checks and then falsified documents indicating he had made the checks.

On February 3, the claimant was disciplined for failing to follow proper work procedure when he stuck a broom handle into a machine in an attempt to un-jam it. By sticking the broom handle in the machine, the claimant bypassed the guards and could have been injured or damaged the machine. The claimant was given a three-day suspension and warned that further rule infractions could lead to his discharge.

On December 2, the claimant was disciplined for running product with the wrong product code on it. The claimant was required to check to insure that the proper code was being printed on the product but failed to do so. The claimant's failure to check the code resulted in a recall of a large quantity of product so that it could be relabeled.

The claimant received a written warning on September 23, 2004 when he was caught reading a newspaper while working at the inspector's station. The claimant was reading the paper rather than inspecting the product, as he was required to do.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

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 had been specifically instructed to run the checks and failed to do so while falsifying the records to indicate that he had performed the required checks. The claimant had been disciplined many times previously for similar conduct. The employer's evidence does establish that the claimant deliberately and intentionally acted in a manner he knew to be contrary to the employer's interests or standards. There was a wanton or willful disregard of the employer's standards. In short, substantial misconduct has been established by the evidence. 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 August 10, 2005, 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 \$3,410.00.

tkh/tjc