

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN E PHELPS

Claimant

APPEAL NO. 09O-UI-01738-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

J C HUFFMAN CABINETRY INC

Employer

**OC: 11/02/08 R: 03
Claimant: Respondent (2-R)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 15, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on February 25, 2009. Claimant participated. Employer participated through Jim Huffman and Teresa Huffman.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits and, if so, whether he is overpaid benefits as a result.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a fireplace mantle builder and was employed from February 21, 2007 until October 28, 2008, when he was discharged. On October 28 he installed trim incorrectly on a cabinet mantle. Shop Supervisor Mike Winslow pointed it out to Huffman, who also inspected the cabinet mantle and found it defective. Employer provided a complete standard set of computer aided design (CAD) drawings detailing the sizes and placement for the trim identical to a mantle he had made the week before. At that time, employer instructed him on the proper assembly and reminded him there would be another identical piece assigned to him the next week. Employer had issued a written warning on October 20 for failure to follow mantle construction instructions on a piece he had built many times before. He was assigned the same pieces to build according to the same CAD drawings over the course of the employment. After the first four to six months of training, claimant was performing his duties with only the occasional mistake. On August 29, 2008, employer warned him that his performance became substandard and slowed such that he was not keeping pace with his regular assignment of two mantles per week. Employer asked him if he was having personal problems that interfered with his work and claimant declined to discuss the matter. He did not tell employer his mother was ill. On September 23 he forgot to build the scribe sticks before packing a mantle but told Winslow he had built them. When the quality inspector

discovered the error it caused a delay in shipping and forced employer to give the customer a discount. While claimant may have been asked not to ask coworker Mike Hamilton for assistance so as not to interrupt his productivity, he was free to ask Huffman for assistance but did not. Nor did he tell employer he was feeling ill the final day of employment and did not ask to go home even though he would have been permitted to do so.

The claimant has received unemployment benefits in the amount of \$2,219.00 since filing a claim with an effective date of November 2, 2008.

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.

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995).

Claimant's repeated failure to adequately and fully perform his job duties after having established the ability to do so is evidence of his willful intent not to do so and amounts to job-related misconduct. Benefits are denied.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

DECISION:

The December 15, 2008, 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 potentially overpaid benefits in the amount of \$2,219.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw