

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GARY L HUSTAK**  
Claimant

**APPEAL NO. 09A-UI-10676-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IA DEPT OF HUMAN SVCS/GLENWOOD**  
Employer

**OC: 05/24/09**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated July 16, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 12, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. David William participated in the hearing on behalf of the employer with witnesses, Pam Stipe and Max Cupp. Exhibits One and Two were admitted into evidence at the hearing.

**ISSUES:**

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a painter from January 23, 2006, to May 4, 2009. On March 10, 2009, the claimant reported to work under the influence of alcohol and drove his vehicle and a state vehicle on the grounds of the Glenwood Resource Center.

As a result of this incident and the claimant's admission that he needed treatment, the employer agreed to hold the disciplinary action of discharge in abeyance provided he completed all aspects of his treatment plan, aftercare plan, and treatment recommendations. The claimant signed a return to work agreement containing these requirements on April 30, 2009. He agreed that his failure to comply with the requirements of the agreement would result in his immediate discharge. The claimant consulted with a substance abuse professional and was scheduled to start outpatient treatment on May 5, 2009. He understood that remaining sober was a requirement of his treatment plan.

In the evening hours on May 4, 2009, the claimant drove to the Pamida Store in Glenwood, Iowa, to pick up a prescription. The prescription was not ready so the claimant bought some alcohol. He decided to drink the alcohol in the parking lot while waiting for his prescription.

After he had finished the alcohol, he realized that he could not drive the 17 miles to his home in the condition he was in. He decided to drive a few blocks to a friend's house, but he was arrested and jailed for operating a vehicle while intoxicated. The claimant submitted to breath and blood tests that showed he was driving under the influence of alcohol. He was absent from work on May 5, 2009, because he was still in jail.

The claimant was suspended on May 6, 2009, so the employer could investigate and decide what action to take. He was discharged on May 28, 2009, for violating the return to work agreement.

The claimant filed for and received a total of \$3,375.00 in unemployment insurance benefits for the weeks between May 24 and August 8, 2009.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of the return to work agreement 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 been established in this case. The conduct was work related because the treatment plan entered into through the return to work agreement required him to remain sober and he ended up missing work due to his alcohol-related offense.

In Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979), the Court ruled that Huntoon's testimony about his alcoholism was not enough to establish his conduct was involuntarily or the result of incapacity. Likewise, the claimant testified that he was an alcoholic, but there is no evidence presented beyond that to prove that his consumption of alcohol on May 4, 2009, was involuntarily or beyond his ability to control.

The unemployment insurance law requires benefits to 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 ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated July 16, 2009, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css