**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

**GREG B PERRY**
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**CITY OF DES MOINES**
**PAYROLL DEPT BERYL GUY**
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**DES MOINES IA 50309**

**Appeal Number: 06A-UI-07035-SWT**
**OC: 05/28/06 R: 02**
**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
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 26, 2006, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 1, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Carol Moser, Attorney at Law, participated in the hearing on behalf of the employer with a witness, Phil Vorlander.

FINDINGS OF FACT:

The claimant worked as a firefighter for the employer from July 4, 1983 to May 2, 2005. The claimant was informed and understood that under the employer's work rules, firefighters absent from work at roll call were considered absent without leave (AWOL) and were subject to

dismissal at four AWOLs. An AWOL could be removed if a firefighter went 24 months without receiving an AWOL.

The claimant's recent history of AWOLs is as follows: (1) April 27, 2002; (2) July 23, 2002; (3) November 26, 2002; and (4) October 25, 2003. He had received discipline for these AWOLs as follows: (1) April 30, 2002, written reprimand; (2) August 7, 2002, suspension and last chance agreement; (3) January 7, 2003, suspension; and (4) October 28, 2003, written reprimand.

On April 26, 2005, the claimant was absent from roll call in the morning because he overslept and reported to work 15 minutes late. As a result of his AWOLs, the employer discharged the claimant on May 2, 2005.

The claimant filed for and received a total of $3,033.00 in unemployment insurance benefits for the weeks between May 28 and July 29, 2006.

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.

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's excessive AWOLs in 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 been established in this case.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid $3,033.00 in benefits for the weeks between May 28 and July 29, 2006.

DECISION:

The unemployment insurance decision dated June 26, 2006, reference 03, 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 claimant was overpaid $3,033.00 in unemployment insurance benefits, which must be repaid.

saw/cs