

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LYNN M BOURNE**  
Claimant

**APPEAL NO. 12O-UI-11321-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE AMERICAN BOTTLING COMPANY**  
Employer

**OC: 05/09/10**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, American Bottling Company (ABC), filed an appeal from a decision dated June 21, 2012, reference 04. The decision allowed benefits to the claimant, Lynn Bourne . After due notice was issued, a hearing was held by telephone conference call on November 29, 2012. The claimant participated on his own behalf. The employer participated by Human Resources Manager Michelle Eggelston and Administrative Services Manager Kimberly Long.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Lynn Bourne was employed by ABC from May 4 until May 19, 2012 as a full-time CSR. From the beginning the claimant had difficulties following orders. He was scheduled to appear for orientation at 9:00 a.m. on May 4, 2012. Instead he appeared in the drivers' room at 5:30 a.m. on May 3, 2012. He was sent home and told to report at the proper time and have his driver's license and social security card. Instead he showed up at 8:00 a.m. and when Ms. Long questioned him about whether he had his license and social security card he said, "I have my gun card."

During the course of his employment he made many errors. He was to take faxed order sheets and transcribe the information onto an order form and then enter that into the computer. His errors became so frequent that Administrative Services Manager Kimberly Long began to check every transaction he was processing. After that he began entering information into the system without having her check them over first and, when questioned, asserted she had checked them over. To address that problem Ms. Long instituted a procedure where she would initial the order form to show she had reviewed it. In spite of that he continued to input order forms that had not been reviewed.

His error rate continued to be excessive. The work rate was excessively slow, he would process one order to the other two CSRs' 25 or 30. He received additional training and did not

write down any of the information into the notebooks provided. Ms. Long finally discharged him on May 19, 2012, for failure to follow instructions and poor work performance.

Lynn Bourne has received unemployment benefits since filing an additional claim with an effective date of June 3, 2012.

### **REASONING AND CONCLUSIONS OF 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.

The claimant may or may not have been able to perform the essential functions of the job but there is nothing to indicate an inability to follow simple instructions. He showed up on the wrong date, when he showed up on the correct date he arrived at the incorrect time. At the time he did show up there is evidence he did not have the necessary documentation as instructed. While Ms. Long was attempting to deal with his error rate he was told not to enter information into the computer until she had checked his work and he refused to follow that order.

This is not a situation where he made an error due to misunderstanding. The extent to which he failed to follow instructions can only be the result of a deliberate refusal to attend to the instructions being given and make a good-faith effort to comply. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

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.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of June 21, 2012, reference 04, is reversed. Lynne Bourne is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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