

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN W GREENE**  
Claimant

**APPEAL NO. 11A-UI-08930-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OVERLAND SYSTEMS INC**  
Employer

**OC: 05/29/11**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Overland Systems, filed an appeal from a decision dated June 30, 2011, reference 01. The decision allowed benefits to the claimant, John Greene. After due notice was issued, a hearing was held by telephone conference call on July 29, 2011. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Vice President Rod Teel.

**ISSUE:**

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

**FINDINGS OF FACT:**

John Greene was employed by Overland Systems until May 20, 2011 as a full-time mechanic/driver. The employer is a sub-contractor of LaFarge Cement Company and performs work on its premises.

On May 6, 2011, the safety director at LaFarge gave Mr. Greene a citation for three safety violations, failure to wear his safety harness, failure to have the harness secured, and failure to wear safety glasses. Vice President Rod Teel was told he should discharge Mr. Greene because he was getting careless with the safety procedures and was a risk.

Shortly after that, Mr. Greene failed to secure a plug in the transmission system of a piece of equipment. The plug worked free, emptying the transmission fluid and causing \$10,000.00 in damage to the equipment. Mr. Teel had a very long talk with the claimant after these incidents and told him his job was in jeopardy because of his increased indifference to and ignoring of the safety rules.

On May 20, 2011, the claimant was driving a dump truck. He dumped the load but did not lower the bed of the truck onto the frame. With the bed still elevated he drove across the yard and struck a beltway which ran from the quarry to the mill. This caused \$300,000.00 in damage and

caused the plant to shut down for a week. When Mr. Teel was notified of the accident, the claimant was discharged that same day.

John Greene has received unemployment benefits since filing a claim with an effective date of May 29, 20011.

**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 had been advised his job was in jeopardy as a result of his carelessness and refusal to follow basic safety rules. In spite of the warning, he continued to ignore safety procedures. The final incident was wanton carelessness that is so substantial it rises to the level of deliberate misconduct. He was discharged for violations of the duties and responsibilities the employer has the right to expect of an employee, creating a hazardous work environment for himself and others, and causing serious damage to equipment and causing loss of revenue. This is conduct not in the best interests of the employer and 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 30, 2011, reference 01, is reversed. John Greene is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, 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

bgh/kjw