

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RONALD A HANSON**  
Claimant

**APPEAL NO. 14A-UI-11646-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEE'S TEES LLC**  
Employer

**OC: 07/06/14**  
**Claimant: Respondent (2)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct  
Iowa Code section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 31, 2014, reference 01, decision that allowed benefits to the claimant, provided he was otherwise eligible; and that held the employer's account could be charged for benefits. After due notice was issued, a hearing was held on December 2, 2014. Claimant Ronald Hanson participated. Randy Wee represented the employer and presented additional testimony through Elena Rosabo, Sarah Maerz, Karl Chambers and Mike Ludwig. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

**ISSUES:**

Whether Mr. Hanson was discharged for misconduct in connection with the employment that disqualifies Mr. Hanson for unemployment insurance benefits.

Whether Mr. Hanson has been overpaid unemployment insurance benefits.

Whether Mr. Hanson must repay benefits.

Whether the employer's account may be charged for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Ronald Hanson was employed by Wee's Tees, L.L.C. as a full-time screen printer from October 3, 2014 until October 13, 2014 when the employer discharged him for insubordination and not being a good fit with the company.

Wee's Tees, L.L.C. is a small business that provides garment screen printing and embroidery. Randy Wee is majority shareholder and general manager. Karl Chambers is minority shareholder and does not regularly perform work for the business. Elena Rosabo is Production Manager. Sara Maerz is responsible for purchasing and receiving. Mike Ludwig is Art Director. The employer also employ's part-time staff and interns.

Mr. Wee interviewed and hired Ronald Hanson to perform screen printing and related duties. Mr. Hanson represented through his resume and through statements during the interview process that he was an experienced screen printer and could help Mr. Wee's business. The initial work hours were 8:00 a.m. to 5:00 p.m., Monday through Friday. Ms. Rosabo was designated Mr. Hanson's primary supervisor. Mr. Hanson job-shadowed for a couple hours on Friday, October 3, 2014 and began working full-time on Monday October 6, 2014.

There were problems with the employment from the first day. Because Mr. Hanson had overstated his screen printing skills, he was unable to perform assigned screen printing duties in a timely and competent manner. On October 6 Ms. Rosabo assigned Mr. Hanson a screen printing job. Ms. Rosabo was at that point functioning under the belief that Mr. Hanson was an experienced screen printer and could perform the work. Rather than complete the screen printing assignment as directed, Mr. Hanson busied himself with cleaning an office area and taking out the trash. No one had asked Mr. Hanson to clean the office area. Ms. Rosabo reported Mr. Hanson's failure to follow her instructions to Mr. Wee. On that same day, Mr. Wee spoke with Mr. Hanson about the incident and directed Mr. Hanson to follow Ms. Rosabo's instructions.

On Tuesday, October 7 Mr. Wee was scheduled to leave town, but took time to speak with Mr. Hanson. Mr. Wee told Mr. Hanson that while he was away, he expected Mr. Hanson to follow the instructions given to him by Ms. Rosabo, Ms. Maerz, or Mr. Chambers. Mr. Wee told Mr. Hanson to perform screen printing duties and any other duties assigned by those three people.

On Wednesday, October 8 Ms. Rosabo assigned Mr. Hanson to complete a screen printing project. Mr. Hanson asserted that the machine he needed to use was broken. The machine was not broken. Mr. Hanson began to take the machine apart and Ms. Rosabo had to stop him before he damaged the machine. Later that day, Ms. Rosabo assigned Mr. Hanson another screen printing project and told him that the project needed to run right away. Shortly thereafter, Ms. Rosabo discovered that Mr. Hanson had abandoned the printing project to go interact with the UPS deliveryman instead. No one had asked Mr. Hanson to deal with the UPS deliveryman. Such duties belonged to Ms. Maerz. Ms. Rosabo enlisted Ms. Maerz's assistance in getting Mr. Hanson back on task. It was standard procedure for the UPS deliveryman to bring packages into a designated spot inside the business. Mr. Hanson had sent the deliveryman away after telling the deliveryman that he would move the packages inside. When Ms. Maerz arrived to assist with getting Mr. Hanson back on task, she was left with the task of completing work that would ordinarily be performed by the UPS deliveryman. As soon as Ms. Rosabo reiterated that she needed Mr. Hanson to run the screen print job right away, Mr. Hanson announced that he was going to take his lunch break instead. Mr. Hanson subsequently completed the screen printing job, but took a long time and performed poor quality work. Ms. Rosabo concluded it was best to assign Mr. Hanson to clean screens, rather than having him perform screen printing.

On Thursday, October 9 Ms. Rosabo arrived at 5:00 a.m. to find the employer's basement flooded with calf deep water. The employer's new sump pump had malfunctioned. The flooding was not the result of a sewer backup. The employer uses an area of the basement to "burn" screens in preparation for running screen printing jobs. Mr. Chambers came to the workplace to address the flooding situation. Mr. Chambers and Ms. Rosabo worked for an hour or two removing items from the basement before Mr. Hanson appeared for his shift. When Mr. Hanson arrived at 8:00 a.m., Ms. Rosabo told Mr. Hanson that everyone was expected to help with the flood-related clean up. Mr. Hanson stated that he could not step in the water, but nonetheless

stepped down into the water. Up to that point, Ms. Rosabo and Mr. Chambers had been the only people stepping into the water. Mr. Chambers directed Mr. Hanson to stay out of the basement until the water had emptied out of the basement. Mr. Hanson went upstairs. Mr. Chambers got an old sump pump working and carried items out of the basement. All of the print screens had been sitting in water needed to be re-cleaned. Cardboard needed to be taken to the dumpster. Doors and paint cans needed to be taken outside. Mr. Chambers asked Mr. Hanson to take the items outside once the water subsided and to bring items back in once they had dried. Within an hour after Mr. Hanson stepped in the water, he told Ms. Rosabo that there was nothing for him to do, that he was going home, and that he would be back. Mr. Hanson did not ask to leave, but instead told Ms. Rosabo what he was going to do. Mr. Hanson returned an hour to an hour and a half later. Mr. Hanson had gone home to change. Mr. Chambers learned of Mr. Hanson's departure when he came upstairs to get his assistance. When Mr. Hanson returned, he began to clean and to take items outside as directed. Mr. Hanson did not bring the doors back inside after they dried. Mr. Hanson did not take all of the cardboard outside. Instead, Mr. Hanson left a piece of cardboard fastened to the basement floor because a part-time employee asked him to. When Mr. Hanson came up from the basement the final time, Ms. Rosabo was performing screen printing duties. Mr. Hanson received a telephone call on his cell phone and leaned against the table in front of Ms. Rosabo as he spoke on his cell phone. Mr. Hanson told Ms. Rosabo that there was a hole in his roof and that someone was going to be at his home in 20 minutes. Mr. Hanson then announced to Ms. Rosabo again that there was nothing for him to do and that he was leaving. Mr. Hanson left before the scheduled end of his shift. Mr. Hanson neglected to mention to Ms. Rosabo that Mr. Chambers had directed him to bring the doors back in after they had dried.

On Friday, October 10 Mr. Hanson called in an absence. Mr. Hanson followed proper procedure. Mr. Hanson left a voicemail message prior to the shift and later spoke directly with Ms. Maerz. Mr. Hanson asserted that he was coming down with the flu. Mr. Hanson made no mention of his absence being related to the basement flooding or any respiratory issue related to the basement flooding or his work duties.

When Mr. Hanson arrived for work on Monday, October 13, 2014 Mr. Wee had made the decision to end the employment. Mr. Wee reviewed the incidents of the prior week and told Mr. Hanson that Mr. Hanson was not a good fit for the employer's small business.

Mr. Hanson established an additional claim for benefits that was effective the week that started October 12, 2014 and received \$945 in benefits for the three-week period of October 12, 2014 through November 1, 2014.

Wee's Tees, L.L.C. is not a "base-period employer" for purposes of the claim year that started for Mr. Hanson on July 6, 2014. Because the employer is not a base-period employer, the employer had not been charged for any benefits already paid to Mr. Hanson.

The employer participated in the October 30, 2014 fact-finding interview through Ms. Rosabo and Mr. Ludwig.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s) alone. The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

In Gilliam v. Atlantic Bottling Company, the Iowa Court of Appeals upheld a discharge for misconduct and disqualification for benefits where the claimant had been repeatedly instructed over the course of more than a month to perform a specific task and was part of his assigned duties. The employer reminded the claimant on several occasions to perform the task. The employee refused to perform the task on two separate occasions. On both occasions, the employer discussed with the employee a basis for his refusal. The employer waited until after the employee's second refusal, when the employee still neglected to perform the assigned task, and then discharged employee. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990).

Despite the brevity of the employment, there is sufficient evidence in the record to establish a pattern of unreasonable refusal to follow reasonable directives. On October 6 Ms. Rosabo reasonably directed Mr. Hanson to perform a screen printing assignment, the work Mr. Hanson had been hired to perform. Mr. Hanson unreasonably elected not to perform that assigned task and instead found busy work to avoid performing the task. A similar incident took place on October 8, 2014 when Ms. Rosabo reasonably assigned Mr. Hanson to perform a screen printing. Mr. Hanson unreasonably elected not to perform the work when initially assigned and again found another, unassigned task to perform, dealing with the UPS deliveryman. At the time, Mr. Hanson was interfering with the employer's operations in two ways by not performing the assigned task and by creating additional work for Ms. Maerz through his interaction with the UPS deliveryman. One October 9 Mr. Hanson elected to leave work early without permission without completing a task that Mr. Chambers had reasonably assigned to him, the task of returning items to the basement after they had dried. The employer had presented sufficient evidence to establish that Mr. Hanson essentially did what he wanted to do and did not do what he did not want to do during the brief employment, despite the employer's needs or interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Hanson was discharged for misconduct. Accordingly, Mr. Hanson is disqualified for benefits until 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 unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful

misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits, if the employer is a "base period employer." Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$945 in benefits for the three-week period of October 12, 2014 through November 1, 2014. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment. The employer is not a base-period employer. The employer has not been charged for benefits paid to Mr. Hanson and will not be charged for future benefits that might be paid to Mr. Hanson.

**DECISION:**

The October 31, 2014, reference 01, decision is reversed. The claimant was discharged on October 13, 2014 for misconduct. Effective October 12, 2014 the claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The claimant was overpaid \$945 in benefits for the three-week period of October 12, 2014 through November 1, 2014. The claimant is required to repay the overpayment. The employer's account has not been charged for benefits paid and will not be charged for future benefits that might be paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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