

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSH TAYLOR**

Claimant

**APPEAL NO. 14A-UI-01219-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HAYLOFT PROPERTY MANAGEMENT CO**

Employer

**OC: 12/22/13**

**Claimant: Respondent (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Hayloft Property Management Company (employer) appealed an unemployment insurance decision dated January 27, 2014, reference 03, which held that Josh Taylor (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 25, 2014. The claimant participated in the hearing. The employer participated through Regional Manager Daniel Patrick, Community Manager Ms. Lynn Sprock, Maintenance Technician Mr. Leslie Epperly and Attorney Joe Dreesen. Employer's Exhibits One through Eight were admitted into evidence.

**ISSUES:**

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time maintenance employee at 'Wellington At The Dunes' apartment community from August 20, 2013, through December 23, 2013, when he was discharged for a repeated failure to follow directives. The employer does not have a progressive disciplinary policy but the claimant received four corrective action warnings prior to his termination. His first written warning was issued on August 23, 2013, after he left work for a doctor's appointment on August 21, 2013, and failed to call or return to work after that. The claimant received a second written warning on October 24, 2013, for a no-call/no-show on October 22, 2013.

A third written warning was issued to the claimant on November 18, 2013, for insubordinate and disrespectful behavior. He failed to add salt to the water softeners as directed on November 6, 2013, and when Community Manager Lynn Sprock addressed the problem with him on November 7, 2013, he became angry and defensive. His continued disruptive behavior resulted

in the warning. The claimant received a final written warning on December 4, 2013, for violating the Outside Employment Policy on November 27, 2013, and for failing to complete the afternoon pool tests as directed on November 30, 2013. Regional Manager Daniel Patrick made sure the claimant knew that his job was in jeopardy if there were any further infractions.

The employer's written work rules prohibit employees from carrying cell phones while working. Additionally, the claimant attended a staff meeting on November 27, 2013, during which the cell phone policy was addressed. He signed a document confirming he knew he was not to have his cell phone on him during work except for during his lunch and breaks. The employer received a complaint that the claimant had been using his cell phone during work hours. The claimant was interviewed by Mr. Patrick and Ms. Sprock on December 23, 2013, he initially denied using his cell phone at work but then admitted, "I won't lie, I mean I'll take a peak (sic) at it during the day when I'm at work to see what time it is but I don't use it to call someone or to check my email or to text message someone. So no I haven't used it at work at all." The claimant was discharged at that time.

The claimant filed a claim for unemployment insurance benefits effective December 22, 2013, and has received benefits after the separation from employment in the amount of \$858.00. Regional Manager Daniel Patrick and Representative Sarah Millsap participated in the fact-finding interview on behalf of the employer.

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

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on December 23, 2013, for a repeated failure to follow company policies. He knew or should have known his job was in jeopardy from the final warning he received. The claimant contends that the employer's cell phone policy states to keep personal use of telephones to a minimum and he claims he did that. However, the policy also states employees cannot carry cell phones with them while they are working and the evidence confirms he violated that policy. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

In the case herein, a waiver cannot be considered because the employer participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount of \$858.00.

**DECISION:**

The unemployment insurance decision dated January 27, 2014, reference 03, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld 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 claimant is overpaid benefits in the amount of \$858.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs