

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW A LEATHERS
Claimant

APPEAL NO: 08A-UI-04816-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARKER COMPANY LTD
Employer

OC: 04/13/08 R: 03
Claimant: Respondent (2)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Barker Company Ltd. (employer) appealed a representative's May 14, 2008 decision (reference 01) that concluded Matthew A. Leathers (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 3, 2008. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Jake Syfert, the vice president of manufacturing, and Todd Kline, a lead person, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any benefits?

FINDINGS OF FACT:

The claimant started working for the employer on July 16, 2007. The employer hired the claimant to work as a finisher. During his employment, the claimant worked as a finisher and as a framer. The claimant liked working as a framer, but did not like finishing work. The claimant's most recent supervisor was Gary Fett.

On December 14, 2007, the employer gave the claimant a warning that if his job performance did not improve within 30 days, the employer would suspend and then discharge him. The warning occurred after the employer observed the claimant standing around, wasting time instead of working to his ability. The claimant's job performance improved after December 14, 2007.

On March 6, Fett and Syfert were not at work. The claimant and a co-worker finished framing a case when Kline asked the claimant to start the finishing work until the employer had more framing work for the claimant to do. The claimant told Kline he was not a finisher, he was just a framer. After Kline explained that as soon as more framing work became available the claimant would again be assigned a framing job, Kline saw the claimant start the finishing work. Thirty minutes later another lead employee reported to Kline that the claimant refused to do any finishing work because he was a framer, not a finisher.

When Kline again talked to the claimant about doing work he was instructed to do, Kline acknowledged that he had no authorization to discharge the claimant for failing to perform the requested finishing work. The next day, Kline told Fett and later Syfert about the claimant's refusal to do finishing work as a supervisor asked him to do. On March 10, 2008, the employer discharged the claimant for refusing to do work the employer instructed him to do.

The claimant established a claim for benefits during the week of April 13, 2008. The claimant filed claims for the weeks ending April 19 through May 10, 2008. He received a total of \$1,069.00 in benefits for these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 AC 24.32(1)(a).

After the claimant received a warning in mid-December 2007, he knew or should have known his job was in jeopardy if he did not perform his job as instructed. Although the claimant may not have liked finishing work, the employer hired him as a finisher. On March 6, the claimant knew no one with authority to discharge him was at work. The claimant's failure to do work a lead person asked him to do amounts to an intentional and substantial disregard of the standard of behavior the employer had a right to expect from an employee. Without any explanation from the claimant as to why he would not follow the supervisor-on-duty's directions, the evidence establishes that the employer discharged the claimant for reasons constituting work-connected misconduct. As of April 13, 2008, the claimant is not qualified to receive benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 96.3-7. The claimant is not legally entitled to receive benefits during the weeks ending April 19 through May 10, 2008. The claimant has been overpaid and must repay \$1,069.00 in benefits he received for these weeks.

DECISION:

The representative's May 14, 2008 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 13, 2008. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant has been overpaid and must repay a total of \$1,069.00 in benefits he received for the weeks ending April 19 through May 10, 2008.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs