

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDWIN HARTMAN
Claimant

APPEAL NO: 13A-UI-08801-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THOMAS L CARDELLA & ASSOCIATES
Employer

OC: 06/30/13
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Thomas L Cardella & Associates, Inc. (employer) appealed an unemployment insurance decision dated July 19, 2013, reference 01, which held that Edwin Hartman (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 September 4, 2013. The claimant participated in the hearing. The employer participated through Corey Nemmers, Operations Manager; Corey Samuels, Program Manager; Miranda Smith, Administrative Assistant; and Toni McColl, Employer Representative. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

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

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 customer care agent for this telemarketing company from January 30, 2012 through June 27, 2013 when he was discharged for repeated insubordination and a failure to follow directives. After new management took over, the rules were enforced and employees were held accountable for their actions. The claimant said the new employees were "over achievers." The operations manager personally warned the claimant about his negative attitude and disrespect. However, the night before he was terminated, his supervisor asked him to sign a paper which showed how many occurrences he had but he initially refused to sign it because he said it was wrong. The supervisor told him that his signature did not mean he agreed with it but just that he was made aware of the information. The claimant signed it but said that he knew the employer was looking for a way to fire him and that he did not care because he would sit at home and draw unemployment.

On the following day, the claimant continued to disregard his supervisor's directives to read the white board program instructions while on his break. He disrupted the work area by asking another employee to read it out loud to him. When the operations manager called the claimant into the office, the claimant became argumentative and was terminated.

The claimant filed a claim for unemployment insurance benefits effective June 30, 2013 and has received benefits after the separation from employment.

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 he was discharged for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's 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 June 27, 2013 for insubordination. The employer terminated the claimant for a type of behavior that the claimant clearly exhibited during the hearing. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. Benefits are denied.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied 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. Iowa Code § 96.3-7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated July 19, 2013, reference 01, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css