

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROGER A BORROR
Claimant

APPEAL NO. 07A-UI-07715-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MC WANE INC
Employer

**OC: 12-24-06 R: 03
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer appealed from a representative's decision dated August 8, 2007, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 27, 2007. Mr. Borrer participated. The employer participated by Jeff Fuller and Ron VanPollen. Exhibits One through Four were received into evidence.

ISSUES:

The issues in this matter are whether the claimant was discharged for misconduct in connection with his employment and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from June 7, 1999 until July 16, 2007 when he was discharged. Mr. Borrer held the position of valve painter. He was employed on a full-time basis and was paid by the hour. His immediate supervisor was Ron VanPollen.

Mr. Borrer was discharged when the employer reasonably concluded that he had not performed his job duties on July 11, 2007. In the position of valve painter Mr. Borrer was to manually paint/powder interior portions of valves before an automated system completed painting the outside portions. On July 11, 2007, the claimant had been observed by his acting supervisor, Mr. VanPollen on two separate occasions using a personal cell phone instead of performing his duties as a valve painter. After the completion of the claimant's work shift it was determined that 79 valves from the claimant's production run had not received sufficient paint in the portion of the valves that were Mr. Borrer's responsibility. Mr. VanPollen, the acting supervisor had assisted the claimant in obtaining a functioning tip for his spray gun that day and Mr. VanPollen had received no other complaints from Mr. Borrer with respect to equipment. Mr. Borrer did not report during his production run that equipment was not operating properly or that insufficient amounts of paint/coating were being applied to the valves. Employees are aware that they are

expected to report any problems in production to their supervisor so that remedial action can be taken. Although other painters used the same spray apparatus before and after Mr. Borrer's work shift, the employer noted no significant problems in the performance of other painters' work or the application of proper paint/coating with the same spray gun apparatus.

It is the claimant's position that any problems in proper coating of the valves related to an improperly functioning paint gun.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the employer has sustained its burden of proof in establishing that Mr. Borrer was discharged under disqualifying conditions. The evidence establishes that Mr. Borrer was an experienced valve painter who had demonstrated the ability to do his job. The claimant, however, had received a warning in the past from the company for failing to perform his duties as expected and was aware that further disciplinary action would take place if he failed to perform his duties. On July 11, 2007, the claimant had initially complained that the tip of his spray gun was not functioning properly. The acting supervisor, Mr. VanPollen, followed up on the claimant's request and the tip was replaced. Mr. Borrer did not further indicate in any manner that he was having any difficulties that day in performing his duties or that the valves that he was spraying were not being sprayed properly. During the afternoon the claimant was observed twice by Mr. VanPollen and once by another worker talking on his personal cell phone during times that the claimant was to be performing his duties.

After the completion of the claimant's work shift it was noted by the following shift that 79 valves completed by Mr. Borrer had not been painted properly. As the claimant was responsible for insuring proper coverage of the valves and had not additionally reported any problems, the employer reasonably concluded that the claimant was not performing his job responsibilities and a decision was made to terminate Mr. Borrer from his employment.

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.

For the reasons stated herein, the administrative law judge finds that the claimant's conduct and disregard of the employer's interests and standards of behavior are thus disqualifying.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

As the claimant's separation was disqualifying benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$1,800.00.

DECISION:

The representative's decision dated August 8, 2007, reference 01, is hereby reversed. The claimant was discharged for misconduct. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$1,800.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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