

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEHREMY A EILT**  
Claimant

**APPEAL NO. 10A-UI-05299-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SLB OF IOWA LC**  
Employer

**OC: 02/28/10**  
**Claimant: Respondent (2-R)**

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

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated March 29, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 25, 2010. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Sheri Hlavacek participated in the hearing on behalf of the employer.

**ISSUES:**

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked as a baker trainer for the employer from May 15, 2007, to March 4, 2010. He was discharged on March 4, 2010, for repeated instances where he lost his temper, used profanity, displayed a negative attitude, and failed to get along with managers and employees. He had been informed in his performance review on October 15, 2009, that he was required to improve his negative attitude and treatment of managers and co-workers, but the problems continued.

On December 29, the claimant was using profanity and blocked a doorway with a cart. On January 19, 2010, he refused to clean an oven, which was one of his job duties. On February 26, 2010, the claimant got upset and began throwing flour around in the restaurant.

On March 2, 2010, the claimant got into a verbal argument with a coworker and was rude to him. This was the last straw so the employer discharged him on March 4, 2010.

The claimant filed for and received a total of \$2,883.00 in unemployment insurance benefits for the weeks between February 28 and May 22, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's repeated conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated March 29, 2010, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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