

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**PAUL J REICKS
1422 SIMON
CARROLL IA 51401**

**AMERICAN HOME SHIELD CORP
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000**

**Appeal Number: 04O-UI-06035-DWT
OC 01/25/04 R 01
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

American Home Shield Corporation (employer) appealed a representative's February 17, 2004 decision (reference 01) that concluded Paul J. Reicks (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. Initially, a hearing was held on March 30, 2004 before another administrative law judge. That administrative law judge issued a decision on April 6 that concluded the employer had not filed a timely appeal. No evidence was taken regarding the reasons for the claimant's employment separation.

The employer appealed the April 6 decision to the Employment Appeal Board. The Employment Appeal Board reversed the timeliness of appeal decision and remanded this case for a hearing on the separation issue.

After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 23, 2004. The claimant participated in the hearing with his witness, Shawn Boyle. Malia Maples, a representative with Employers Unity, Inc., appeared on the employer's behalf with Brent Baumhover and Ann Fitzpatrick. Based on the evidence, the arguments of the parties, 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 unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on June 8, 1998. During his employment, the employer gave the claimant several warnings for failing to follow the employer's instructions. Prior to January 2004, the claimant received a final written warning and a suspension for failing to follow the employer's procedures or instructions in December 2002.

In November 2003, the claimant learned the employer wanted employees to make sure contractors sent to do work for the employer were licensed and insured. In mid-January 2004, the employer told the claimant that any network contractors were to be referred to other employees. The claimant had been doing business with network contractors instead of referring them to the appropriate employees.

On January 15, 2004, the claimant received information from a licensed network contractor about an inspection the contractor had done concerning a homeowner's complaint about some ductwork the employer was responsible for installing a number of years ago. The licensed contractor concluded the previous installer had failed to do the job correctly and gave the claimant a quote of \$5,200.00 to repair the ductwork. The claimant believed this quote was out of line. The claimant also questioned whether the ductwork problem was the responsibility of the employer or if there was another reason for the homeowner's problems.

Baumhover, the claimant's supervisor, learned about this homeowner's complaint and the licensed contractor's quote on January 15, 2004. On January 16, Baumhover left a message for the claimant to contact the licensed contractor to see if he could negotiate a lower price to repair the homeowner's ductwork. After another employee informed the claimant she had negotiated a price of \$4,900.00 with the licensed contractor, the claimant indicated he had another company lined up to get a second opinion. The claimant contacted Boyles with Drain Master to receive another opinion about the homeowner's problems. Boyles had done plumbing work for the homeowner and agreed to look at the ductwork. The claimant knew Drain Master did not have a license to do any of the work involving ductwork for the homeowner.

Drain Master looked at the ductwork and notified the employer that the bad ductwork was caused by pest damage. Drain Master's opinion was contrary to the licensed contractor's opinion. As a result of Drain Master's opinion, the employer told the homeowner that any repairs to the ductwork were the homeowner's responsibility and not the employer's.

On Monday, January 19, another employee learned Drain Master was not a licensed contractor. When this information was relayed to the claimant, he told the employee to void out Drain

Master so the employer would not use Drain Master for any heating and air conditioning work. By this time Drain Master had already given the employer its opinion about the cause of the "bad" ductwork.

The homeowner was upset about being denied because of pest damage and contacted a California agency. The homeowner requested a review of her claim because the person who had inspected her ductwork was not HVAC licensed. The California agency contacted the employer's legal department about this allegation.

Before the employer had an opportunity to talk to the claimant, the claimant left Baumhover a voice mail admitting he sent a plumber (Drain Master) to check the homeowner's ductwork and that Drain Master was not a licensed heating contractor. In his message, the claimant admits he should not have sent Drain Master to look at this homeowner's ductwork.

On January 23, 2004, the employer talked to the claimant and reviewed the recent incidents in which he had not followed the employer's procedures or instructions. During this conversation, the claimant could not guarantee that he would not again fail to follow the employer's instructions. The employer discharged the claimant on January 23, 2004, for sending an unlicensed contractor to assess the cause of damage to a homeowner's ductwork and again failed to follow the employer's instructions or procedures.

The claimant established a claim for benefits during the week of January 25, 2004. He filed claims for the weeks ending January 31 through June 19, 2004. He received his maximum weekly benefits of \$339.00 during each of 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 §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 IAC 24.32(1)(a).

The claimant understood the employer used only licensed contractors. The claimant decided a licensed contractor's quote of \$5,200.00 to repair some ductwork was too high. On his own initiative the claimant decided to ask Drain Master to look at the homeowner's ductwork problem and assess the cause of the problem. The claimant knew Drain Master was not licensed to do this type of work. Based on the Drain Master's opinion, the employer denied homeowner's claim. Since Drain Master had previously done plumbing at this home, the homeowner knew Drain Master did not have a heating license. The homeowner registered a formal complaint with the appropriate California agency because the employer used an unlicensed contractor to assess the cause of the homeowner's ductwork problems and denied the homeowner's claim.

Since the claimant knew on January 16 that Drain Master did not have a license for heating or ductwork, he intentionally and substantially disregarded the employer's interests when he directed Drain Master to assess the ductwork problem and give the employer another opinion

as to the cause of the ductwork problems. Since the employer denied the homeowner's claim based on the unlicensed contractor's opinion that the homeowner's ductwork problem was the result of pest damage, the claimant knew or should have known the employer only used licensed contractors for work and opinions as to the cause of a problem. The claimant even admitted to the employer that he should not have asked Drain Master for an opinion. The claimant's failure to follow the employer's procedure in using licensed contractor's amounts to work-connected misconduct. Therefore, as of January 25, 2004, the claimant is not qualified to receive unemployment insurance 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 §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending January 31 through June 19, 2004. The claimant has been overpaid a total of \$7,119.00 in benefits for these weeks.

DECISION:

The representative's February 17, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 25, 2004. 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 is not legally entitled to receive benefits during the weeks ending January 31 through June 19, 2004. He has been overpaid a total of \$7,119.00 in benefits he received for these weeks.

dlw/b