

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RONALD L ROONEY**  
Claimant

**APPEAL NO. 09A-UI-10279-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY OF CEDAR RAPIDS**  
Employer

**OC: 01/04/09**  
**Claimant: Respondent (2R)**

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

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated July 16, 2009, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 4, 2009. Claimant participated. Employer participated by Mark Jacobs, Park Supervisor—NE Side. The record consists of the testimony of Ronald Rooney and the testimony of Mark Jacobs.

**ISSUES:**

Whether the claimant was discharged for misconduct; and  
Whether the claimant had been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was a part-time seasonal employee for the City of Cedar Rapids. He worked during the late spring and summer months in 2008 and was re-hired in 2009. He began working on April 15, 2009. The claimant was terminated on May 28, 2009.

The incident that led to the claimant's termination occurred on May 28, 2009. The claimant and another employee named Mike got into an argument over picnic tables. Mike and the claimant were close to each other and the claimant put out his hand and pushed Mike's left shoulder. Mike did not institute any physical contact with the claimant. This incident was reported to Mark Jacobs, who was the direct supervisor. Mr. Jacobs conducted an investigation and talked to both parties as well as other witnesses to the event.

The employer has a zero tolerance for violence in the workplace. This policy is in writing and is contained in the employee handbook, which the claimant had received at the start of both of his seasonal employees.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

Misconduct is found when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Fighting is one form of misconduct that can lead to disqualification for unemployment insurance benefits.

The evidence in this case established that the claimant and Mike had some ongoing problems working with each other. The claimant felt that Mike was criticizing his work. The incident that led to the claimant's dismissal was over whether picnic tables needed to be moved so that the mowers and trimmers could reach the grass under the picnic tables. Mike and the claimant had an argument and the claimant initiated physical contact with Mike. The employer had information that the claimant slapped Mike on the face. The claimant denies this but admits that he pushed Mike and that Mike did not instigate any physical contact although the two of them were close together.

The employer had a written policy that prohibited violence in the workplace. The claimant had a copy of that written policy and therefore would know that disciplinary action could result if there was a violation of that policy. An employer has a vested interest in maintaining a violence-free workplace. Although the claimant denies slapping Mike, he did admit that he pushed Mike in the shoulder and that this physical contact came after a verbal confrontation. The claimant instigated the physical contact and there is no evidence that he was defending himself when he

made that physical contact. The claimant not only violated the employer's work rules, but his deliberate conduct constituted a breach of the duties and obligations he owed to his employer. Benefits are denied.

The next issue is overpayment of benefits. Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

This matter is remanded to the Claims Section for determination of an overpayment.

**DECISION:**

The decision of the representative dated July 16, 2009, reference 02, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid

wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. This matter is remanded to the Claims Section for a determination of any overpayment.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs