

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD L YARBOR JR
Claimant

APPEAL NO. 09A-UI-09239-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA MOLD TOOLING CO INC
Employer

OC: 08/31/08
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 June 23, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 14, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Dana Dempsey participated in the hearing on behalf of the employer. Exhibits One and Two were admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as a welder from September 27, 2005, to May 21, 2009. The claimant was informed and understood that under the employer's work rules, falsification of company records was grounds for termination.

The claimant was on a new job that involved welding crane arms. The claimant was informed and understood that he was required to have another employee inspect the critical welds. That employee was required to initial the internal welds verification sheet to verify that the inspections had taken place. On several occasions, the claimant had problems getting employees to inspect his critical welds. Some employees told the claimant to go ahead and put their initials on the sheet because they trusted him. The claimant deliberately put his initials on the internal welds verification sheet verifying that another employee had inspected his welds even though they had not done so.

On May 21, 2009, the employer received allegations that the claimant had falsified the internal welds verification sheets. After investigating the allegations and finding them to be true, the employer discharged the claimant on May 28, 2009.

The claimant filed for and received a total of \$2,527.00 in unemployment insurance benefits for the weeks between May 24 and July 11, 2009.

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 section 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 conduct in violation of a known work rule 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 section 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 section 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated June 23, 2009, 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 section 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs