

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

ERIC M BERGAN
APT 101
2857 CORAL CT
CORALVILLE IA 52241

F SQUARED LLC
PLANET X
255 COLLINS RD NE
CEDAR RAPIDS IA 52402

Appeal Number: 05A-UI-08051-HT
OC: 07/10/05 R: 03
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 is 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) – Overpayment

STATEMENT OF THE CASE:

The employer, Planet X, filed an appeal from a decision dated August 2, 2005, reference 01. The decision allowed benefits to the claimant, Eric Bergan. After due notice was issued a hearing was held by telephone conference call on August 23, 2005. The claimant participated on his own behalf. The employer participated by President David Full, Shift Managers Sara Maring and Kelli Zenor and Staff Member Holly Byers. Exhibit One was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Eric Bergan was employed by Planet X from October 28, 2003 until June 16, 2005. He was a full-time shift manager.

In May and June 2005, President David Full talked to the claimant in private regarding complaints about his "attitude." He was characterized by the staff as condescending and arrogant. Mr. Full considered Mr. Bergan to be a good employee and wanted to retain him, and therefore advised him he needed to modify his behavior so as not to alienate his subordinates.

On June 13, 2005, Mr. Full came to work and was deluged by complaints from female shift managers and staff who "had had enough" of the claimant's conduct. He not only continued to be patronizing and condescending, the president was informed of inappropriate language used by Mr. Bergan as well as comments of a sexual nature he would make regarding staff and customers. At least one of the women threatened to quit.

On June 15, 2005, the employer received a letter of complaint regarding an autistic child. The child and its respite worker had been asked to leave Planet X on June 6, 2005, because the child was running around and making a lot of noise. Mr. Full called the author of the letter and obtained more details, then checked with the schedule to see who had been working on the night in question. Mr. Bergan was the shift manager and one of the employees who had also been working recalled the claimant asking the child and its respite worker to leave.

The employer reviewed all the complaints and the claimant's past history. He was concerned that between the complaint regarding the disabled child and the complaints from female staff and customers, the claimant's conduct exposed the company to too much legal liability. Mr. Full contacted the claimant by phone and discharged him.

Eric Bergan has received unemployment benefits since filing a claim with an effective date of July 10, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was discharged for unprofessional and discourteous conduct toward co-workers and customers. The employer felt, not without substantial reason, this behavior could result in lawsuits against the business for anything from sexual harassment to denial of equal access for the handicapped. The claimant's conduct was a liability to the employer and constitutes conduct not in the best interests of the employer. He is disqualified.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of August 2, 2005, reference 01, is reversed. Eric Bergan is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$870.00.

bgh/pjs