

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

GENE A DUTLER  
2034 HWY 59  
IDA GROVE IA 51445

GOOD SAMARITAN SOCIETY INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

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Appeal Number: 04A-UI-04283-RT  
OC: 03-14-04 R: 01  
Claimant: Respondent (5)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The employer, Good Samaritan Society, Inc., filed a timely appeal from an unemployment insurance decision dated April 2, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Gene A. Dutler. After due notice was issued, a telephone hearing was held on May 10, 2004 with the claimant participating. The claimant was represented by Steven Hamilton, Attorney at Law. Lia Aikey, Administrator of the Holstein, Iowa, Good Samaritan, participated in the hearing for the employer. Candi Graff, Staff Development and Human Resources, was available to testify for the employer but not called because her testimony would

have been repetitive and unnecessary. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### 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: The claimant was employed by the employer as a full-time director of maintenance from June 29, 1995 until he was discharged on March 17, 2004. The claimant was discharged for allegedly being unable to perform the essential duties of his position. On April 14, 2000, the claimant was working on-the-job and while backing up to avoid a collision with another he fell into a trench injuring his back. This injury was related to his employment. The claimant was then off work until June 20, 2000 when he was released to return to work for light duty and in particular a thirty pound weight lifting restriction. The employer was able to meet his restrictions and offer him light duty. The claimant began part-time and worked part-time except for surgery in January 2001. The claimant was then back on light duty part-time and then became full-time in March 2001 and continued to work for the employer thereafter full-time. The employer met his restrictions. The claimant could perform most duties with certain devices to assist him. He did have the 30 pound weight restriction but otherwise was able to do his duties. In October 2003 the claimant was also injured at work and injured his hand. A temporary restriction that is still in place prohibits him from working over his head. Nevertheless the claimant continued to work after this period until he was discharged. The employer was still able to meet those restrictions. The claimant's performance was acceptable for the light duty without performing the restrictions. A new administrator was appointed at the employer's location in Holstein, Iowa, and required another maintenance person and another part-time. The employer did not believe it could afford to keep the claimant and the other maintenance persons and therefore discharged the claimant on March 17, 2004. Apparently, at least some of the duties of the other maintenance persons were duties that the claimant could not meet.

Pursuant to his claim for unemployment insurance benefits filed effective March 14, 2004, the claimant has received no unemployment insurance benefits although he has filed weekly claims for six weeks from benefit week ending March 20, 2004 to benefit week ending April 24, 2004 because records show earnings and vacation pay and other pay sufficient to cancel benefits for those six weeks. For benefit week ending May 1, 2004, the claimant is approved for benefits and shows no earnings or vacation pay for that week.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was not.
2. Whether the claimant is overpaid unemployment insurance benefits. He is not.

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. It is well established that the employer has the burden to prove disqualifying misconduct. See Iowa Code Section 96.6(2) and Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982) and its progeny. The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The testimony of the parties is remarkably similar.

The claimant was injured in 2000 and after surgery and being on part-time light duty he returned to full-time light duty work for the employer in March 2001 and continued to work for the employer thereafter. The claimant could perform most of his duties with certain devices to assist him. The employer was able to meet the 30 pound restriction placed upon the claimant throughout that period of time. Apparently, the claimant had some kind of verbal agreement with the former administrator to continue his position on this light duty. The claimant's performance of his light duty work was acceptable. In October 2003 the claimant injured his hand but nevertheless continued to work with another restriction, not able to work over his head, but he was also able to continue working for the employer from that time until he was discharged. Apparently, a new administrator decided that she could no longer afford to keep the claimant on since another maintenance person was hired to perform those duties that the claimant could not, although the claimant could perform most of the duties of his job. The claimant was then discharged.

The administrative law judge concludes that the claimant was able to perform most of his duties and did so since January 2001 and even after he injured his hand in October 2003. Both the injury caused by a work incident on April 14, 2000 and his injury in October 2003 were work related. Because the employer was able to meet the claimant's working restrictions the administrative law judge must conclude that the claimant's failure to perform all of his duties because of the restrictions arising out of work related injuries is not a deliberate act or omission constituting a material breach of his duties nor does it evince a willful or wanton disregard of the employer's interests nor is it carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged but not for disqualifying misconduct, and, as a consequence, he is not disqualified to receive unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits, and misconduct to support a disqualification from unemployment insurance benefits must be substantial in nature. Fairfield Toyota, Inc. v. Bruegge, 449 N.W.2d 395, 398 (Iowa App. 1989). The administrative law judge concludes that there is insufficient evidence here of substantial misconduct on the part of the claimant to warrant his disqualification to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided he is otherwise eligible.

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 administrative law judge concludes that the claimant has received no unemployment insurance benefits since separating from his employer herein on or about March 17, 2004 and filing for such benefits effective March 14, 2004. Even if the claimant had received

unemployment insurance benefits, the administrative law judge would conclude that he would not be overpaid such unemployment insurance benefits as a result of his separation from the employer herein.

DECISION:

The representative's decision of April 2, 2004, reference 01, is modified. The claimant, Gene A. Dutler, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible, because he was discharged but not for disqualifying misconduct. As a result of this decision, the claimant is not overpaid any unemployment insurance benefits arising out of his separation from the employer herein.

tjc/kjf