IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JUSTIN ROUSE
Claimant

HIGHWAY EQUIPMENT CO
Employer

APPEAL NO: 17A-UI-01064-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/01/17
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 24, 2017, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 20, 2017. The claimant participated in the hearing. Brian Bedard, Director of Human Resources and Safety; Scott Reid, Plant Manager; Mike Grim, Production Supervisor; Dan Irons, Line Lead; and Jason Clair, Line Lead; participated in the hearing on behalf of the employer. Employer's Exhibits 1 through 3 were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production operator I for Highway Equipment Company from September 3, 2013 to January 3, 2017. He was discharged for dishonesty and insubordination.

During the employer's daily production meeting on Friday, December 9, 2016, the employer reminded the claimant's team they were required to place the scheduling number and serial number on each unit. The claimant testified he did not recall that statement or that policy being in place prior to December 9, 2016, and did not hear the announcement during the meeting. On Monday, December 12, 2016, the claimant asked a co-worker in the shipping department if he used those numbers and that employee stated he did not and opined the claimant did not have to follow the employer's procedure after the claimant's supervisor, Dan Irons, "said something about putting the numbers on the units." The shipping department employee had no supervisory authority. The claimant did not ask Mr. Irons about the requirement or anyone in the Final Shipping department about the reason his team was being asked to put the numbers on the units or whether Final Shipping needed the information. On December 13, 2016, the claimant asked Jason Clair, Line Lead of the Final Shipping department, if he used the

information and Mr. Clair stated his department did use it. On December 14, 2016, Mr. Irons was told by other team members that the claimant was not placing the schedule or serial numbers on the units and as a result Mr. Irons conducted an audit. After the audit revealed the claimant was not entering the numbers, despite being told to do so on two occasions by Mr. Irons on December 9 and December 12, 2016, the employer prepared two written warnings for the claimant and presented them to him December 15, 2016, just prior to the employer going on a two-week plant shutdown for the holidays. One warning dealt with safety as the claimant failed to wear his gloves and the second warning addressed the claimant's insubordination with regard to not putting the schedule or serial numbers on the units after being told to do so twice by his supervisor. During the meeting, the claimant told the employer he was only told about the schedule and serial number requirements the day before or possibly two days before that but was not aware of it prior to that. The employer questioned why the claimant did not do as his supervisor instructed and the claimant stated he talked to a co-worker who said he did not need to record the numbers on the units. The employer asked the claimant if he thought anyone in Final Shipping might need the information and the claimant said no. The employer did not have time to investigate the claimant's claims prior to the shutdown during which time management and a few employees would be working but not the claimant. Consequently, the employer told the claimant it would give him their decision on the status of his employment when he returned to work January 3, 2017. The employer notified the claimant January 3, 2017, that his employment was terminated for dishonesty.

The claimant received a written warning and three day suspension May 15, 2015, because his conduct did not meet the employer's expectations after he "demonstrated an unwillingness to work with and/or assist certain members of his department" and "his treatment of others borders on the creation of a hostile work environment" (Employer's Exhibit 3). The warning also indicated the claimant often left his department and socialized for long periods of time and that he did not respect his supervisor as demonstrated by the fact that on May 13, 2015, the claimant refused to clean the parts Mr. Irons asked him to clean which the employer deemed to be insubordination (Employer's Exhibit 3).

On July 27, 2016, the claimant received a consultation after telling Mr. Irons he "didn't care about" multiple operation priorities that would be coming soon on July 22, 2016 (Employer's Exhibit 2). Mr. Irons explained the claimant should care but the claimant walked away from him (Employer's Exhibit 2). Later that day Mr. Irons told the claimant he was going to need to work "large clean Wednesday, Thursday and Friday" in another employee's absence and the claimant laughed and said, "I'll have to see how much PTO I have" (Employer's Exhibit 2). Also on that date, Mr. Irons found that the priorities he instructed the claimant to complete had not been done and another employee finished his line. The claimant told Mr. Irons, "My job is done. The parts are up. I can't control what Rick does" (Employer's Exhibit 2). Mr. Irons explained to the claimant that part of his responsibilities as the "person loading the paint line…include communicating what is priority and ensuring it makes it through the small paint operations on time" (Employer's Exhibit 2). Mr. Irons told the claimant he should have notified "Rick of the priorities during one of the many conversations the two of them had throughout the day" (Employer's Exhibit 2). Mr. Irons attempted to show the claimant "options to communicate things like this effectively…but again (the claimant) acted as if he had better things to do and turned away mumbling under his breath" (Employer's Exhibit 2).

The claimant has claimed and received unemployment insurance benefits in the amount of $3,248.00 for the seven weeks ending February 18, 2017.

The employer personally participated in the fact-finding interview through the statements of Director of Human Resources and Safety Brian Bedard. The employer also submitted written documentation prior to the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
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> 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 Dep't of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

While the claimant denies that he was dishonest with the employer about when he learned of the requirement that he put the schedule and serial numbers on the units that went through his line, his testimony was inconsistent and unpersuasive. The claimant attended the daily production meeting Friday, December 9, 2016, and was responsible for the information and instruction provided during that meeting. He told the employer December 15, 2016, he was not aware of the requirement until a day or two earlier. However, the claimant asked a Shipping Department employee, with no authority to make a decision on the matter, whether he needed the numbers on Monday, December 12, 2016, which indicates he was aware of the requirement by at least that date and contradicts his testimony that he only learned of the requirement December 13 or 14, 2016.

The claimant had a history of insubordination toward Mr. Irons, as demonstrated by his warnings May 15, 2015 and July 27, 2016, and was again insubordinate to him by refusing to follow his instructions and failing to put the schedule and serial numbers on the units as required despite being told to do so at least twice by Mr. Irons. When the claimant learned he was receiving another written warning for insubordination December 15, 2016, he misled the employer about when he was told of the numbering requirement which forced the employer to conduct an unnecessary investigation. Had the claimant simply acknowledged the warning rather than being dishonest with the employer regarding the facts surrounding the warning, he would not have been discharged for the insubordination. The employer could not tolerate the claimant's dishonesty, however, and that resulted in the claimant's termination of employment.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

Iowa Admin. Code r. 871-24.10 provides:

> Employer and employer representative participation in fact-finding interviews.
>
> (1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and

information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

The unemployment insurance law provides that benefits must 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. In this case, the claimant has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer participated in the fact-finding interview personally through the statements of Director of Human Resources and Safety Brian Bedard. Consequently, the claimant's overpayment of benefits cannot be waived and he is overpaid benefits in the amount of $3,248.00 for the seven weeks ending February 18, 2017.

DECISION:

The January 24, 2017, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The employer personally participated in the fact-finding interview within the meaning of the law. Therefore, the claimant is overpaid benefits in the amount of $3,248.00 for the seven weeks ending February 18, 2017.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/rvs