

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFERY J MILLER
Claimant

APPEAL NO. 10A-UI-13213-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHRADER EXCAVATING & GRADING CO
Employer

OC: 12/20/09
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Schrader Excavating & Grading Company (Schrader) filed an appeal from a representative's decision dated September 16, 2010, reference 02, which held that no disqualification would be imposed regarding Jeffery Miller's separation from employment. After due notice was issued, a hearing was held by telephone on November 1, 2010. Mr. Miller participated personally. The employer participated by Michelle Moorehead, Office Manager, and Gene Davidson, Truck Foreman.

ISSUE:

At issue in this matter is whether Mr. Miller was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Miller began working for Schrader on April 2, 2010 as a full-time, local truck driver. Approximately 15 minutes before the start of his shift on August 25, he contacted Gene Davidson and told him he was taking time from work for a job interview. He had learned of the interview the day before but did not bring it to the employer's attention at that time. Mr. Davidson told him he had to come to work because his services were needed. Mr. Miller did not offer to rearrange his interview so that he could work. He was told he had to come to work or he would be considered a quit or would be discharged. He told Mr. Davidson that he was not quitting. Because he gave no indication that he intended to come to work as scheduled, Mr. Miller was discharged.

Mr. Miller filed an additional claim for job insurance benefits effective August 22, 2010. He has received a total of \$3,239.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Miller was discharged because he refused to report for scheduled work. He committed himself to a job interview without first checking with his current employer to determine if he would, in fact, be available. He did not give his employer immediate notice that he would need time off. He made no effort to try to rearrange his interview when told his services were needed at work.

Mr. Miller's first obligation was to his current employer. His refusal to come to work in favor of interviewing for a potential job constituted insubordination. His actions constituted a substantial disregard of the standards an employer has the right to expect. Whether Mr. Miller wanted two hours off or the entire day, the fact remains that he refused to report for work when scheduled and as directed by his employer. He knew that his failure to do so would result in his separation from the employment as Mr. Davidson clearly put him on notice of his fact. For the reasons cited herein, it is concluded that disqualifying misconduct has been established and benefits are denied.

Mr. Miller has received benefits since filing his additional claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated September 16, 2010, reference 02, is hereby reversed. Mr. Miller was discharged for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Miller will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs