

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH D JOHNSON
Claimant

APPEAL NO. 08A-UI-00418-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYERS MUTUAL CASUALTY CO
Employer

**OC: 12/09/07 R: 02
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 2, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on January 29, 2008. Claimant participated. Employer participated through Mike Duffield and was represented by Lori Magerko, Attorney at Law. Claimant's Exhibits A through B were received. Employer's Exhibits 1 through 5 were received.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits, and if so, whether he is overpaid benefits as a result.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time risk improvement representative from April 22, 1991 until December 3, 2007, when he was discharged. He was supposed to perform an inspection on November 14, 2007 at the Charles City Community School District. He postponed the inspection with the school district at least once, saying he had hit a deer with the company car (there was no damage to the vehicle), but indicated on his time record that he did the inspection as scheduled. The district contacted Duffield by e-mail on November 26 indicating claimant had not performed the inspection until November 21 and was rude to multiple employees. When confronted, claimant first told Duffield that the inspection was done on November 14 and then said he did not recall if it was completed then. There was no work reported on November 21, and he was not in the office according to the badge entrance record check. Both parties agree that claimant's reported rudeness was out of character for him. It was not until the separation that claimant told employer he had relapsed after having successfully completing alcohol rehabilitation in July 2007.

Employer had warned him about dishonesty on March 6, 2007, after he said he had one report to finish and would have it completed at the end of the day. Duffield found out there were two

survey reports not done within the ten-day lag time. Claimant recalled forgetting about the other report and turning them both in within five days.

The claimant has received unemployment benefits in the amount of \$2,082.00 since filing a claim with an effective date of December 9, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

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.

Consumption of alcohol on the job following warning constitutes job misconduct where claimant checked into an alcohol abuse program after the discharge and stopped drinking showing his actions were volitional. *Ayersman v. IDJS*, 417 N.W.2d 466 (Iowa 1988).

An employer has a reasonable expectation of honesty from an employee about work-related matters. While claimant may not have recalled acting rude to employees of the school district because he had a relapse into alcoholism, employer's primary concern was the issue of his honesty and trustworthiness. Since claimant was successful in his rehabilitation, his relapse is considered volitional according to the case law cited above. Thus, his time report indicating the inspection was done on November 14 and not November 21 was false. Furthermore, claimant's

excuses were deceitful, rather than telling employer the difficult truth and saying he had relapsed, even after employer had cooperated with him for his rehabilitation in July. Claimant failed to meet the reasonable standard of honesty on at least two counts in November and benefits are denied regardless of the warning in March 2007.

Iowa Code § 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The January 2, 2008, 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 is overpaid benefits in the amount of \$2,082.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw