

**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**

**NATHAN R SMITH
12611 SE 64TH AVE
RUNNELS IA 50237**

**ALL STATE GUTTER INC
PO BOX 118
WAUKEE IA 50263**

**Appeal Number: 04A-UI-06395-DW
OC: 06/01/04 R: 02
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 are 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 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

All State Gutter, Inc. (employer) appealed a representative's June 1, 2004 decision (reference 04) that concluded Nathan R. Smith (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on July 13, 2004, in Des Moines. The claimant did not appear for the hearing. Rick Ross, an owner, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The employer rehired the claimant on March 19, 2004. Before the employer rehired the claimant, the employer asked the claimant about his driving record. The claimant gave the employer a copy of his driving record and indicated it was a recent copy. Since the claimant had previously worked for the employer, the claimant knew the employer's insurance company would check the claimant's driving record to make sure he was insurable. The employer did not look at the driving record the claimant presented. The employer just turned the driving record over to its insurance agent.

On April 9 or 12, the employer's insurance agent contacted the employer to report the claimant was not insurable. The driving record the claimant had provided was issued in 2002. While this record showed the claimant had an accident on January 11, 2002 it did not reveal accidents he had on December 13, 2002 and January 5, 2004. The employer concluded the claimant intentionally failed to reveal the history of accidents he had been involved with so the employer would hire him. The employer discharged the claimant on April 12, 2004 because the claimant misled the employer about his insurability at the time the employer decided to rehire the claimant.

The claimant established a claim for benefits during the week of November 16, 2003. He reopened his claim during the week of April 18, 2004. The claimant filed claims for the weeks ending April 24 through May 8, 2004. He received a total of \$253.35 in benefits during these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence presented during the hearing indicates the claimant intentionally failed to accurately inform the employer about his driving record in mid-March 2004. Since the claimant knew or should have known the employer required employees to be insurable, it was the claimant's obligation to inform the employer about all the accidents he had been involved in prior to March 19, 2004. The claimant's failure to provide accurate information about his driving record amounts to an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for reasons constituting work-connected misconduct. As of April 11, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending April 24 through May 8, 2004. He has been overpaid a total of \$253.35 in benefits he received for these weeks.

DECISION:

The representative's June 1, 2004 decision (reference 04) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 11, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits during the weeks ending April 24 through May 8, 2004. He has been overpaid a total of \$253.35 in benefits.

dlw/kjf