

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

CORNELL S MILTON
728 WESTWINDS DR #2
IOWA CITY IA 52246

USCC PAYROLL CORPORATION
8410 W BRYN MAWR AVE
STE 700
CHICAGO IL 60631

Appeal Number: 05A-UI-07557-H2T
OC: 06-12-05 R: 03
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 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

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 July 6, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 25, 2005. The claimant did not participate. The employer did participate through Mathew Rull, Manager of Corporate Executive Appeals and Associate Phone Program. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a corporate executive appeal specialist full time beginning February 2000 through June 6, 2005, when he was discharged. The claimant was discharged for filing a fraudulent in house insurance claim. All employees and customers are allowed to purchase

Signal Insurance for their cell phones. This insurance, which is paid as part of the customer's or employee's regular monthly bill, allows for replacement of a damaged or lost cell phone. The claimant did purchase Signal Insurance on his cell phone account. Occasionally a customer will indicate at the time they purchase a cell phone that they do want to purchase cell phone insurance from Signal, but for whatever reason the insurance is not included. Later, if a customer makes a claim against their Signal policy, and they are told they are not insured, they can make what the employer calls an "in house insurance" claim. In house insurance is only for customers who intended to purchase Signal Insurance but for whatever reason did not received the insurance coverage. Any customer or employee who has Signal Insurance would never have a need to make an in house insurance claim, since they have insurance protection.

After a regular review of the claimant's phone account revealed that he had made an in house insurance claim, while he had Signal Insurance in place, the employer investigated the questionable transaction. The employer discovered that the claimant had never made a claim to Signal Insurance about a supposedly malfunctioning phone. The claimant was attempting to purchase a cheap camera phone for his girlfriend by making an in house insurance claim. The claimant's coworker who made the transaction was also discharged for making a false insurance claim. The claimant's coworker indicated that the claimant's motive was to obtain a cheap camera phone for his girlfriend. The claimant was well aware of the employer's policies and procedures, as it was his responsibility to explain them to customers and to other coworkers.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

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 section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant asked another coworker to file a fraudulent insurance claim so that he could obtain cheap camera phone for his girlfriend. The claimant's actions constitute theft from the employer and are disqualifying misconduct. Benefits are denied.

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.

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 July 6, 2004, 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 \$620.00.

tkh/kjw