

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

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BALL PLASTIC CONTAINER CORP
C/O UNEMPLOYMENT SERVICES LLC
PO BOX 749000
ARVADA CO 80005-9000

Appeal Number: 06A-UI-06457-DWT
OC: 05/28/06 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 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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Ball Plastic Container Corporation (employer) appealed a representative's June 13, 2006 decision (reference 01) that concluded Andrew S. McCloud (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, a telephone hearing was held on July 12, 2006. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Sandy Fitch represented the employer. Jolene Welp, the human resource manager, and Tim Malott testified on the employer's behalf. During the hearing, Employer's Exhibits One through Seven were offered and admitted as evidence. Based on the evidence, the arguments of the parties, 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 claimant started working for the employer on December 27, 2004. The claimant worked as a full-time processing technician. The claimant's job duties included inspecting four stations every hour to make sure product was not defective. The employer required the claimant to record his visual inspections.

On September 22, 2005, the employer gave the claimant a written warning and a three-day suspension for failing to report a defect at one station. The person who relieved the claimant immediately noticed the defect and properly reported the problem. The employer concluded the claimant had not actually made a visual check as he had recorded. (Employer Exhibit One.)

The claimant and other employees went to a training class on March 29, 2006. This training informed the claimant and other employees how to isolate defective product so it would not be shipped to a customer. (Employer Exhibit Two.) On May 18, 2006, the day operator noted a high finish dimension at one station and made a note of the problem on her reports. The maintenance department had been advised of the situation. Prior to the claimant working, maintenance personnel had taken down the station a number of times, but decided to change a part in a couple of days. When the claimant reported to work at 6:30 p.m., the day operator informed him about the continued high finish dimension at the one station.

The claimant made his first visual inspection of the questionable station at 7:20 p.m. The claimant did not note any problems on his report even though this station had been consistently running a high finish dimension before. At 8:10 p.m. the claimant reported expanded finishes at this station. A maintenance employee then took the line down for an hour while a part was replaced. Even though the claimant noted defective parts at 8:10 p.m., he did not attempt to isolate any defective product. Defective product was shipped to a customer, which in turn resulted in a loss of product and downtime for the customer. The customer charged the employer over \$1,500.00 for the defective product the employer sent. (Employer Exhibit Three.)

The employer learned about the defective product on May 23 when the customer complained. The employer's business records revealed the claimant was the employee responsible for the defective product shipped to the customer. (Employer's Exhibits Four.)

On May 26, the employer discharged the claimant. The employer discharged him because May 18 was the second time the claimant failed to report problems while doing a quality check. The employer concluded the claimant falsified business records when he did not note any problems at a station at 7:20 p.m. and did not perform his job by failing to isolate defective product so it would not be shipped to a customer.

The claimant established a claim for unemployment insurance benefits during the week of May 28, 2006. The claimant filed claims for the weeks ending June 3 and 10. He received his maximum weekly benefit amount of \$367.00 for both of 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 section 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).

Based on the evidence presented during the hearing, a preponderance of the evidence establishes the claimant knew that one station had been running a high finish to the point the product was almost defective. The claimant, however, reported at his first visual inspection that this station was fine – he did not note any potential problems as the earlier operator had noted. When the claimant noted defects on this line, he failed to take the necessary steps to isolate product that had been produced so it would not be shipped to a customer. Since the claimant had been warned and suspended for the way in which he performed quality checks and had recently attended training on how to isolate product, the claimant's failure to perform either of these job duties on May 18 amounts to a substantial disregard of the employer's interests. The employer discharged the claimant for reasons constituting work-connected misconduct. As of May 28, 2006, 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 section 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending June 3 and 10, 2006. The claimant has been overpaid \$734.00 in benefits he received for these weeks.

DECISION:

The representative's June 13, 2006 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 28, 2006. 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 for benefits paid to the claimant. The claimant is not legally entitled to receive benefits for the weeks ending June 3 and 10, 2006. The claimant has been overpaid and must repay \$734.00 in benefits he received for these weeks.

dlw/pjs