

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREW J GRAVES**  
Claimant

**APPEAL NO. 12A-UI-00693-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CUSTOM-PAK INC – LP2**  
Employer

**OC: 12/18/11**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Custom-Pak, Inc. filed a timely appeal from a representative's decision dated January 13, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on February 15, 2012. Claimant participated. The employer participated by Ms. Andrea Lawrence, Human Resource Manager, Mr. Don Kingery, Second Shift Supervisor, and Mr. Lony Adrian, Manufacturing Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Andrew Graves was most recently employed by Custom-Pak, Inc. from September 15, 2009 until December 14, 2011 when he was discharged from employment. Mr. Graves was employed as a full-time group leader and scheduled to work 2:45 p.m. until 11:30 p.m. Monday through Friday. The claimant was paid by the hour. His immediate supervisor was Lony Adrian.

Mr. Graves was discharged from his employment with Custom-Pak, Inc. based upon his conduct on the night of December 13, 2011. At that time the company was experiencing production problems and machine malfunctions. Mr. Graves was involved in attempting to remedy the problems. Mr. Kingery, the Shift Supervisor, spoke with Mr. Graves at approximately 10:15 p.m. and at 10:35 p.m. that evening about production issues. Mr. Graves was instructed to bring an operator to a certain area and Mr. Kingery assumed that the claimant would follow the most recent directives given to him. Later, Mr. Kingery realized that the most recent instruction given to Mr. Graves had not been followed and began to look for the claimant. Mr. Graves could not be located at the employer's facility and it was later noted that the claimant had punched out prior to the end of the work shift. As the claimant had not received permission

to leave work prior to the end of the work shift from Mr. Kingery, the employer concluded that the claimant had left work without authorization and had chosen to quit employment.

The following day, December 14, 2011, Mr. Graves reported for work. The employer was surprised to see the claimant as they had believed that he had quit his job. Mr. Graves was called to a meeting and at that time told that he was being dismissed for walking off the job without authorization. Mr. Graves admitted fault in the matter and requested that the employer give him another chance. Although the meeting lasted for an extended period of time, Mr. Graves did not indicate that it was his belief that he had been given authorization to leave work the preceding night.

It is the claimant's position that he was upset and stressed on the night of December 13, 2011 due to ongoing production problems and machine malfunctions. It is claimant's further position that upon one occasion on the night of December 13, 2011 he had stated to Mr. Kingery while discussing production problems that he "wanted to leave." It is claimant's further position that he believed that Mr. Kingery may not have heard his request as Mr. Kingery did not respond. Mr. Graves maintains that he did not bring the issue of asking permission to leave up at the meeting on December 14, 2011 because he was upset and was not given the opportunity to do so.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

The employer has the burden of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter the evidence in the record establishes that the claimant was discharged from employment based upon the employer's reasonable belief that Mr. Graves had left work on the night of December 13, 2011 without authorization. The evidence establishes that the company was having production and machine malfunction problems that night and that the work was hectic and stressful. Mr. Kingery, the Second Shift Supervisor, testified he had visited with Mr. Graves on two occasions that evening and that Mr. Graves had not requested permission to leave or indicated his desire to go home prior to the end of the work shift that night. Mr. Kingery had most recently given the claimant a work instruction and expected the claimant to follow it. When Mr. Kingery found that the instruction had not been followed, he began to look for Mr. Graves and subsequently determined that the claimant had left work without authorization. The evidence in the record does not establish that Mr. Graves left employment due to illness or injury or that he did not have the opportunity to request and receive permission before leaving.

When the claimant reported back to work the following day, a meeting was held wherein the employer explained the reasons for Mr. Graves' job termination. Claimant did not indicate during the meeting that he had requested permission to leave or that he had received permission to do so. The employer thus reasonably concluded once again that the claimant had left work without authorization.

No contract for employment is more basic than the right of the employer to expect employees will appear for work on the day and hour agreed upon and to continue working their shift unless being given authorization to leave or alter their working hours. The claimant's act of leaving work during his work shift without authorization during a time when his skills were especially needed showed a willful disregard for the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Iowa Employment Security Law. Unemployment insurance benefits are withheld.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

**DECISION:**

The representative's decision dated January 13, 2012, reference 01, is reversed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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