

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

NIKAAYE W WALKER
433 – 23RD ST
BETTENDORF IA 52722

GMRI INC
c/o JON-JAY ASSOCIATES INC
PO BOX 6170
PEABODY MA 01961

Appeal Number: 06A-UI-01033-HT
OC: 12/25/05 R: 04
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) – Overpayment

STATEMENT OF THE CASE:

The employer, GMRI, filed an appeal from a decision dated January 17, 2006, reference 01. The decision allowed benefits to the claimant, Niikaaye Walker. After due notice was issued a hearing was held by telephone conference call on February 14, 2006. The claimant provided a telephone number of (309)631-1580. That number was dialed at 10:59 a.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the claimant's participation unless he called the toll-free number prior to the close of the record. By the time the record was closed at 11:08 a.m. the claimant had not called in and did not participate. The employer participated by General Manager Patti Shellabarger. Exhibit One was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Niikaaye Walker was employed by GMRI from January 20, 2004 until December 24, 2005. He was a full-time dish washer. At the time of hire he received a copy of the employee handbook.

On December 24, 2005, General Manager Patti Shellabarger saw the claimant leaving the cooler with two bottles of beer in his hand. This was after his shift had ended and he was in his coat, ready to leave. He had no regular job duties in the cooler and even if he had, he was off duty and would have no reason to be in there.

The general manager questioned him and he admitted to taking the beer which belonged to the employer. He was discharged immediately for theft and violation of the company policies.

The record was closed at 11:08 a.m. At 11:14 a.m. the claimant called and requested to participate. He had received the notice and knew the time and date of the hearing but was not available when the judge placed the call.

Niikaaye Walker has received unemployment benefits since filing a claim with an effective date of December 25, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 was discharged for theft of company property. He was in an area where he had no regular job duties, and was off duty at the time he was seen leaving the cooler. The two bottles of beer belonged to the company and he had no reason to have them in his possession. His acknowledgement that he had taken them is an admission of theft, which is conduct not in the best interests of the employer. The claimant is disqualified.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

The next issue is whether the record should be reopened. The judge concludes it should not. The claimant knew the time and date the hearing was being held. He used a cell phone, despite a specific recommendation in the notice of the hearing these should not be used. He was not available at the time the call was placed and did not call in within five minutes of the start of the hearing as recommended. The record does not establish good cause to reopen the record under the provisions of 871 IAC 26.14(7).

DECISION:

The representative's decision of January 17, 2006, reference 01, is reversed. Niikaaye Walker is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,266.00.

bgh/pjs