

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

CHRISTOPHER D BAKER
119 – 28TH ST SW
MASON CITY IA 50401

AUTO ZONE INC
DEPT 8029-1
PO BOX 2198
MEMPHIS TN 38101-2198

Appeal Number: 05A-UI-07729-HT
OC: 06/26/05 R: 02
Claimant: Respondent (2-R)

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, Auto Zone, filed an appeal from a decision dated July 18, 2005, reference 01. The decision allowed benefits to the claimant, Christopher Baker. After due notice was issued, a hearing was held by telephone conference call on August 15, 2005. The claimant participated on his own behalf. The employer participated by Field Sales manager Wayne Mitchell.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Christopher Baker was employed by Auto Zone from January 15, 2001 until June 20, 2005. He was a full-time sales representative. The company

sets quotas for the sales people for each four-week period. Any employee who fails to meet quota for three consecutive periods is subject to discharge.

Mr. Baker received warnings regarding his failure to meet quota on March 13, April 10, and May 8, 2005. He was advised his job was in jeopardy. He did not meet quota for the third consecutive period which ended June 4, 2005. Field Sales Manager Wayne Mitchell had to submit the paperwork to the corporate office, as he could not discharge the claimant without approval. The paperwork was submitted June 8, 2005, and the claimant was notified on June 20, 2005, he was discharged. At that time he told Mr. Mitchell he had been working part time for another company since October 2004. As of the day after his discharge he became a full-time independent representative for this other company.

Christopher Baker has received unemployment benefits since filing a claim with an effective date of June 26, 2005.

The claimant is currently an independent representative for another company.

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 notified his performance needed to improve, and he had to meet his quota, or his job was in jeopardy. While his performance throughout his employment had been "up and down" as far as meeting his quota, the real problem began not long after he started acting as a representative for the other company. While Mr. Baker has maintained his relationship with the other company was very casual, the administrative law judge finds this to be questionable. The fact he began as a full-time independent representative immediately after being discharged by Auto Zone indicates the relationship was more than casual. His failure to meet quota may not have been entirely due to this other business relationship, but it was apparently enough to interfere with his ability to meet quota with Auto Zone. Failure to work to the best of one's ability for the employer is misconduct and 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 issue of whether the claimant is able and available for work should be remanded for determination.

DECISION:

The representative's decision of July 18, 2005, reference 01, is reversed. Christopher Baker 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 \$1,670.00.

bgh/kjw