

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TODD BERRY**  
Claimant

**APPEAL NO: 07A-UI-09866-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOUBLE DRAGON INTERNATIONAL INC**  
Employer

**OC: 09-09-07 R: 04  
Claimant: Respondent (2)**

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 October 16, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 11, 2007. The claimant participated in the hearing. Dr. J.B. Priest, President; Dana Priest, Account Executive; Steve Fishwild, Account Executive; and Sara Merrick, Human Resources, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as full-time account executive for Double Dragon International from August 2, 1999 to September 11, 2007. In August of 1999 the claimant worked in the Dubuque office four days per week and worked at home one day per week. Approximately three years ago the claimant asked the employer if he could work at home three days per week and in the Dubuque office two days per week because he was having trouble with his young sons. The employer agreed he could do so on a temporary basis. The claimant continued working at home three days per week until approximately 18 months ago when the employer started telling him it wanted him to work five days per week in the office. The employer's business had grown from a one million dollar company to a forty-one million dollar business over the time period the claimant was working for the employer and the employer felt the claimant's experience and his ability to communicate with colleagues and clients could be best utilized and of more assistance in the office. The claimant continually objected to moving to the office and on August 14, 2007, the employer asked him for an alternative proposal but the claimant failed to provide one. The claimant lived 144 miles away from Dubuque and felt the change would create a financial hardship for him but did not ask the employer for a mileage reimbursement or something else of that nature. He also felt the employer should have negotiated with him regarding working at home two days per week and in the office three days per week but did not discuss that idea with

the employer either. The employer set a deadline of September 11, 2007, for the claimant to return to the office five days per week but the claimant did not show up and when the employer called him he indicated he would not work in the office five days per week and consequently the employer terminated his employment for failing to accept the terms of employment set by the employer.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Under some circumstances this situation might be viewed as a change in the contract of hire as that term is used in unemployment insurance if the claimant had voluntarily left his employment. That is not the case in this matter. The refusal to accept reasonable changes in job duties constitutes job misconduct since the employer has the right to allocate personnel in accordance with its needs and resources. Brandl v. IDJS, (Unpublished, Iowa App. 1986). The employer's business has grown by leaps and bounds

during the last eight years. What might have been a perfectly reasonable arrangement of the claimant temporarily working in the office two days and at home three days per week three years ago is not necessarily a workable, reasonable arrangement at this point in time with the growth of the employer's business. The claimant argues the employer should have negotiated with him prior to issuing an ultimatum that he return to the office five days a week September 11, 2007, but the claimant had more responsibility to initiate a proposal, and failed to do that after being invited to do so by the employer August 14, 2007. The employer had talked to the claimant about returning to the office full-time for the last 18 months and the claimant refused to respond other than to say he could not or would not return to the office, which left the employer with little choice but to set a date for him to come back to the office. The claimant's dismay at having to return to the office is understandable. He made the choice, however, not to return to the office full-time which in turn cost him his job. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). 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 October 16, 2007, 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 \$3,730.00.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/pjs