

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALAN M BARSEMA
Claimant

APPEAL NO. 08A-UI-01340-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

**OC: 02/11/07 R: 04
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 31, 2008, reference 07, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 25, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Colleen McGuinty participated in the hearing on behalf of the employer with a witness, Dawn Fulton.

ISSUE:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer on an assignment at a company called Molded Fibers in Clinton, Iowa, from December 12 to December 21, 2007. The claimant was informed and understood that under the employer's work rules, he was required to notify the employer if he was going to be absent from work.

The claimant went with his family to East Moline, Illinois, for the Christmas holiday. This would be approximately 40 miles away from his workplace in Clinton. He was scheduled to work on December 26 at 11:00 p.m. His family stayed in East Moline on December 26, so the claimant did not have transportation to work. The claimant failed to notify the employer about his absence. The claimant was absent from work on December 27 for the same reason. Again, he failed to notify the employer about his absence.

On December 28, Molded Fibers notified the employer that the claimant had been absent without notice on December 26 and 27. Brenda Lampe, an account manager with the employer, called the claimant on December 28 and asked him what had happened on

December 26 and 27. He said he did not have a ride to work or a phone to call in. Lampe informed him that Molded Fibers considered him to have voluntarily quit based on his absences.

The claimant filed for and received a total of \$1,670.00 in unemployment insurance benefits for the weeks between January 6 and February 9, 2008.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The claimant was discharged, because the evidence fails to establish that he intended to quit his job when he was absent on December 26 and 27.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The employer's evidence that the claimant was absent without notice to the employer on December 26 and 27 is more credible than the claimant's testimony. The claimant admitted that he had not called the employer on December 26 but said he called Molded Fibers to let them know he would not be in. He said he did not report to work on December 27 because on that morning he received a call from the employer that he was terminated. This is contradicted by notes prepared by Lampe stating the call was made on December 28 after Molded Fiber notified the employer the claimant had missed work on December 26 and 27. It is more likely that the notes prepared by Lampe accurately reflect what happened than the claimant's recollection. I also believe the claimant told Lampe that he did not have transportation or a phone, which contradicts the claimant's testimony that he called Molded Plastics on December 26.

The division has interpreted misconduct as follows in 871 IAC 24.32(1):

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 (Iowa 1979).

The claimant's absences without notice in violation of a known work rule were a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The absences were not due to illness or other legitimate excuse, and work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits effective January 6, 2008, and was overpaid \$1,670.00 in benefits for the weeks between January 6 and February 9, 2008.

DECISION:

The unemployment insurance decision dated January 31, 2008, reference 07, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$1,670.00 in unemployment insurance benefits, which must be repaid.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw