

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHAN KASDORF
Claimant

APPEAL NO. 10A-UI-04463-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACE ELECTRIC INC
Employer

**Original Claim: 02-14-10
Claimant: Respondent (2R)**

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 March 11, 2010, 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 May 6, 2010. The claimant participated in the hearing. Jeff Hess, Project Estimator, 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 a full-time warehouse manager for Ace Electric from January 3, 1995 to February 19, 2010. He was scheduled to work 7:00 a.m. to 4:00 p.m. The office and payroll manager reminded him of his schedule February 6, 2009, but when he failed to keep that schedule, he received a verbal warning February 27, 2009. After the verbal warning, he continued to come and go as he wanted, resulting in unauthorized overtime. On May 21, 2009, the claimant received a second verbal warning for continued non-compliance with the schedule and failure to follow the proper time-off request procedure. The employer moved into a new warehouse in July 2009. In August 2009 Owner Bob Schulty asked the claimant to move the pallet and conduit racking into the new warehouse from the side of the building where it had been stored. The claimant did not do so and on December 15, 2009, Mr. Schulty had Project Estimator Jeff Hess leave the claimant a note instructing him to get the pallet and conduit racks done. Mr. Schulty indicated he talked to the claimant several times about the situation and he still had not taken care of the problem. There was snow and ice on the racking sitting outside and one of Mr. Schulty's concerns was that the racking would be hit by snow removal equipment. The claimant had not completed the installation of the racking by February 19, 2010, and Mr. Schulty terminated his employment for failing to do so in the five months since he was first told to do it, requiring Mr. Schulty to bring in three employees for three days to install the pallet and conduit racking.

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). The claimant was the warehouse manager and was asked by the owner of the company to install the pallet and conduit racking in the new warehouse. Despite having five months to do so and receiving a note from Mr. Schultzy December 15, 2009, directing him to do the installation, the claimant still failed to do it. While the claimant agreed that was the "straw that broke the camel's back," he argued that was not the actual reason for the termination but believes he was discharged because he broke a generator in August 2009 and was not working the schedule the employer wanted him to work. The employer did not issue him a warning about the generator, however, and denied that had anything to do with the separation. Although the claimant was not working the hours the employer expected him to work and was not following the proper procedure for time-off requests, the main reason for the termination was his failure to install the racks. Because the claimant failed to move the racks into the new warehouse between August and December 14,

2009, or between December 15, 2009, when Mr. Schulty had Mr. Hess leave him a note, and February 19, 2010, when his employment was terminated, 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). Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The March 11, 2010, 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 has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw