

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AVDULAH SEHIC**  
Claimant

**APPEAL NO: 11A-UI-09710-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EMCO ENTERPRISES INC**  
Employer

**OC: 06-05-11**  
**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 July 14, 2011, 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 August 17, 2011, and continued on September 13, 2011. The claimant participated in the hearing with Interpreter Janja Pavetic-Dickey and Attorney Adnan Mahmutagic. Mary Halverson, Senior Human Resources Generalist; Aaron Bloodsworth, Production Superintendent; Elvir Mehic, Supply Chain Coordinator; and Tom Kuiper, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Five were admitted into evidence.

**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 production worker for Emco from June 7, 1999 to June 9, 2011. The claimant was on light duty work following a work-related injury April 13, 2011. The claimant had been working light duty assembling jam liner balancers for doors but due to business needs and absenteeism the employer told him he needed to assemble top and bottom door frames June 3, 2011. The claimant's restrictions at that time stated he could not lift more than ten pounds or bend his body at his back. Production Superintendent Aaron Bloodsworth instructed the claimant he needed to move to the other production position, which was within his restrictions, where he would be required to lift and assemble two, five-pound aluminum door pieces as they moved through the production line. The employer provided a material handler employee to assist the claimant so he would not have to do any bending. Mr. Bloodsworth asked the claimant to move to the other position several times but the claimant refused to do so. Mr. Bloodsworth then had Union Steward John Kaldenberg and Supply Chain Coordinator Elvir Mehic, who acted as a translator, approach the claimant with him to explain exactly what the employer was asking him to do and that a refusal to move to the other position was grounds for termination and if he did not comply he would be sent home until a decision was made

regarding the continuation of his employment (Employer's Exhibit Five). The claimant raised his voice at Mr. Bloodsworth and Mr. Mehic but would not make the move to the frame sub assembly table (Employer's Exhibit Five). Mr. Bloodsworth then asked Union President Dave Allen to come to their location and after reviewing the claimant's restrictions and the job he was being asked to do Mr. Allen agreed the job was within the claimant's restrictions. Mr. Bloodsworth demonstrated what he wanted the claimant to do and made sure he understood, through Mr. Mehic, what was being asked of him and the claimant indicated he understood but was still unwilling to do that job because he felt it violated his medical restrictions. Mr. Bloodsworth asked Mr. Mehic if he clearly communicated the "repercussions of refusing" to do the work assigned and Mr. Mehic confirmed that he had done so. The parties then proceeded to Senior Human Resources Generalist Mary Halvorson's office and discussed the situation. The claimant still refused to do the job assigned, stating he was unable to perform that job, and arguing with Ms. Halvorson and Mr. Bloodsworth. He was then instructed to clock out until further notice from the employer (Employer's Exhibit Five). After reviewing the incident the employer terminated the claimant's employment June 9, 2011, for deliberately and willfully refusing to comply with the instructions of a supervisor June 3, 2011.

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 § 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). While the claimant stated he could not do the job the employer wanted to move him to June 3, 2011, the employer made accommodations for the claimant's medical restrictions until the job was a light duty position and neither the union steward nor the union president felt the job, as explained and demonstrated by Mr. Bloodsworth, violated the claimant's restrictions. Although no one present was a medical provider the claimant's restrictions were straightforward and easily understood by lay people and Mr. Bloodsworth took pains to insure the job would not violate the claimant's restrictions by providing another employee to work by his side to do anything the claimant could not do with his restrictions. 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). 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 § 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 § 96.3-7-b is remanded to the Agency.

**DECISION:**

The July 14, 2011, 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 § 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs