

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TOMMAS L HOLDER
Claimant

APPEAL NO. 10A-UCX-00013-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO
Employer

OC: 07/12/09
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 16, 2010, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 13, 2010. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Carolyn Cross participated in the hearing on behalf of the employer with a witness, Kevin Spencer.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked as a production worker for the employer from October 14, 2009, to January 5, 2010. He was informed and understood that under the employer's work rules, an employee was subject to immediate termination if he left the immediate area of a pump or tank during the filling process. On November 19, 2009, the claimant had been warned about failing to follow instructions after he went ahead and transferred some product after he had been specifically told to wait until the trainer was there.

On January 5, 2010, the claimant violated the work rules by leaving a tank unattended while it was being filled with product to go down to the ground floor to check on a pump. As a result, the tank was overfilled and product was spilled on the floor, which wasted the product and created a safety hazard for anyone cleaning up the spill.

As a result of the rule violation and prior history of failing to following instructions, the claimant was discharged on January 5, 2010.

The claimant filed for and received a total of \$1,232.00 in unemployment insurance benefits for the weeks between January 3, 2010, and February 13, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule was 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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 ineligible for those benefits. The matter of deciding 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 unemployment insurance decision dated February 16, 2010, reference 03, 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 matter of deciding 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.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css