

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 05A-UI-07401-DT
OC: 06/19/05 R: 02
Claimant: Respondent (2)

MICHAEL D MCFADDEN
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BAGLEY IA 5006

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

MCKEE AUTO CENTER INC
PO BOX 160
400 S 1ST AVE
PERRY IA 50220

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

McKee Auto Center, Inc. (employer) appealed a representative's July 12, 2005 decision (reference 01) that concluded Michael D. (Dan) McFadden (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was convened on August 4, 2005. The claimant participated in the hearing on that day. John Haakma appeared on the employer's behalf and presented testimony from two other witnesses, Brad Schlarbaum and Casey Cross. Two other witnesses, Anthony McKee and Debbie McKee, were available on behalf of the employer but did not testify. The hearing on August 4, 2005 was recessed prior to the completion of the employer's case and prior to the presentation of the claimant's case. The parties mutually agreed to reconvene the hearing at 1:00 p.m. on

August 9, 2005. However, on the morning of August 9, 2005, the claimant contacted the Appeals Section and indicated that he was opting not to participate in the remainder of the hearing. The hearing was therefore concluded without his participation. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 7, 2002. He worked full time as sales associate at the employer's new and used automobile dealership. His last day of work was June 4, 2005. The employer discharged him on that date. The stated reason for the discharge was inappropriate conduct toward staff and customers, sleeping while on duty, and refusing orders.

The claimant had previously been warned with regard to having a negative attitude toward coworkers, most recently on January 7, 2005 when he had been placed on probation. He had also been warned about having his feet on the desk, playing on-line games while on duty, sleeping while on duty, and using vulgar language. On or about May 20, 2005, the claimant refused a manager's order that he wash a vehicle for a customer since the regular staff who would wash a vehicle for a customer pickup had already left for the day. On or about May 25, 2005, the claimant made a statement to a female employee that he could "sit there forever" with her at an isolated area on the employer's property; the claimant had previously been warned to avoid talking to this employee and specifically not to make comments approaching intimacy. On or about May 27, 2005, a female customer was looking to buy a vehicle from the employer, but after dealing with the claimant, she reported back to the employer that she would not buy a car from the employer if she had to work with the claimant, as he had been rude, cocky, arrogant, and pushy. On or about May 28, 2005, the claimant had rudely yelled across the sales floor for an employee to serve as a Spanish interpreter for a call that he was on. Mr. Haakma, the sales manager, had been out of the office the last week of May when these events occurred; upon his return, he discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective June 19, 2005. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$2,254.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was

discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code §96.5-2-a.

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.

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, 448 (Iowa 1979).

The claimant's behavior shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

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 representative's July 12, 2005 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 4, 2005. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is overpaid benefits in the amount of \$2,254.00.

ld/tjc