

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHANIEL L STEVENS
Claimant

APPEAL NO. 13A-UI-02255-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASPIRE RESOURCES INC
Employer

OC: 01/27/13
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Aspire Resources Inc. filed a timely appeal from a representative's decision dated February 22, 2013, reference 05, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on March 25, 2013. Although duly notified, the claimant did not participate. The employer participated by Mr. Bob Krueger, Director of Human Resources, Ms. Wendy Walker, and Mr. Ryan Baker. Employer's Exhibits One, Two and Three were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Nathaniel Stevens was employed by Aspire Resources Inc. from September 11, 2012 until January 25, 2013 when he was discharged from employment. Mr. Stevens was employed as a full-time call center loan counselor and was paid by the hour. His immediate supervisor was Rhonda Ingle.

Mr. Stevens was discharged after a company investigation determined that Mr. Stevens was intentionally engaging in "call avoidance" by manipulating the company's systems to intentionally make himself unavailable to take calls. Mr. Stevens was aware of the proper procedures and had demonstrated the ability to properly perform his duties in the past.

The employer concluded that not only was Mr. Stevens intentionally avoiding calls, he also engaged in intentional falsification of company records about the length of calls he participated in.

Mr. Stevens was aware of the company policies and the company's reasonable work expectation and had acknowledged receipt of the company's handbook.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record shows misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this matter the evidence in the record establishes that the claimant was discharged for willful falsification of company records and for willful call avoidance. The evidence in the record establishes that Mr. Stevens was aware of his job responsibilities and that the claimant had demonstrated the ability to properly perform his duties. The claimant was discharged, however, when a review of company records showed that the claimant had intentionally engaged in call avoidance and falsification of company documentation regarding the length of calls that he had engaged in. The claimant knew or should have known that under company policies he was subject to discharge from employment for a violation of the company's falsification and/or call avoidance rules.

There being no evidence to the contrary, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated February 22, 2013, reference 05, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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