

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREW KRUSE**

Claimant

**APPEAL NO. 09A-UI-03755-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHARLOTTE ELECTRICAL SERVICE INC**

Employer

**Original Claim: 02-01-09  
Claimant: Respondent (2-R)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct  
Iowa Code section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated February 25, 2009, reference 01, which allowed benefits to the claimant. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 3, 2009. The claimant participated in the hearing. Owner Brad Burken, Journeyman Ardell Reuter, and Journeyman Derrick Ferris participated in the hearing on behalf of the employer. Employer's Exhibits One and Two and Claimant's Exhibit A were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record finds that: The claimant was employed as a full-time journeyman apprentice from December 24, 2007 through February 2, 2009, when he was discharged due to repeated failure to follow orders. The claimant regularly failed to follow the employer's orders and instructions. Both the owner and the foreman were frustrated with him. The claimant would not wear his tool belt even after being reminded numerous times. He did not always wear his safety equipment and safety glasses. When the claimant was hired, he said he could climb, but the employer never saw him off the ground with his tool belt. Additionally, the employer frequently had to call him over the weekend to ask about his time cards, which should have been completed prior to the weekend. In addition to not following orders and instructions, the claimant also failed to work consistently throughout the day. The employer received several customer complaints about the claimant's work performance, since he often stood around without working. His work was sloppy and items were often missing. The employer finally decided the claimant's continued employment was becoming too detrimental to the employer's business and discharged him January 15, 2009. The termination letter advised the claimant he could stay until he found another job and the claimant worked through February 2, 2009.

The claimant has claimed and received unemployment insurance benefits since his separation from employment.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for repeated failure to follow the employer's directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). Despite continued reminders, the claimant's performance did not improve. He demonstrated an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. 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 unemployment insurance decision dated February 25, 2009, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits. 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 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw