

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J MORRIS
Claimant

APPEAL NO. 08A-UI-09918-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINEGARD COMPANY
Employer

OC: 08/24/08 R: 04
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Winegard Company filed an appeal from a representative's decision dated October 17, 2008, reference 01, which held that no disqualification would be imposed regarding Michael Morris' separation from employment. After due notice was issued, a hearing was held by telephone on November 10, 2008. Mr. Morris participated personally. The employer participated by Dan Brauns, Warehouse Operations Manager, and Mary Jo Fisher, Human Resources Manager. The employer was represented by Diane Elkins of Talx Corporation.

ISSUE:

At issue in this matter is whether Mr. Morris was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Morris was employed by Winegard Company from August 20, 2007 until August 21, 2008 as a full-time warehouse driver. He was discharged for failing to follow instructions in the performance of his job.

Mr. Morris was counseled on December 28, 2007 when he failed to have trailers backed in to the dock as directed. Instead, he left the trailers in the lot. He was counseled on February 27, 2008 due to disruptive behavior. The specifics of his behavior are unknown. He was again counseled on May 23 after he and another employee shipped an incorrect order. One of them was acting as picker and the other as checker. They shipped the correct products but too few of one and too many of another. Both were disciplined as a result of the error.

Mr. Morris received a final warning on June 6 due to what the employer considered inappropriate conduct. There was a departmental pot-luck lunch and employees were allowed to have 30 minutes for lunch rather than the usual 20 minutes. After the lunch, Mr. Morris went to another warehouse to work as scheduled. When management went to the warehouse, it was found that Mr. Morris was taking an additional lunch break. When questioned, he indicated it

was not busy at the second warehouse. The employer felt he should have returned to the original warehouse if there was no work at the second.

On July 25, Mr. Morris was again warned. Employees had been told not to use the trailers owned by UPS for company purposes. Mr. Morris used a UPS trailer for Winegard Company purposes without authorization. When questioned, he indicated there were no other trailers to use. He did not, before using the UPS trailer, ask his supervisor what he should do since no other trailers were available.

The decision to discharge Mr. Morris was due to the fact that he disregarded instructions as to how high pallets could be stacked. He knew he was not to stack the pallets more than two high. On the morning of August 20, he told the warehouse manager that there was not enough room for all of the pallets. The manager indicated he would try to find additional room. Mr. Morris also questioned another manager about the space issue and was told to let the warehouse manager handle the issue. Instead of waiting for the manager to locate additional space, Mr. Morris stacked the product four and five pallets high. The weight caused damage to product in the amount of \$4,747.00. He was notified of his discharge on August 21, 2008.

Mr. Morris filed a claim for job insurance benefits effective August 24, 2008. He has received a total of \$1,535.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, the administrative law judge concludes that the employer has satisfied its burden of proof. Mr. Morris had a history of disregarding instructions from management.

In December of 2007, Mr. Morris left trailers in the lot instead of backing them in to the dock as directed. In July of 2008, he used a UPS trailer in spite of clear instructions not to. Management was available by telephone and two-way radio. If there were problems, he should have sought guidance from someone in a supervisory position rather than ignoring previous instructions. In spite of prior warnings and counselings, Mr. Morris again disregarded instructions on August 20, 2008. He acknowledged during the hearing that he knew he was not to stack the pallets more than two high. He also acknowledged that he was told by the warehouse manager that additional space would be located. Instead of waiting for the additional space to be located, Mr. Morris disregarded known instructions and stacked the pallets four and five high.

The administrative law judge is not inclined to believe that Mr. Morris would have been disciplined for not stacking product if he did not have space to stack it, especially since the warehouse manager was aware of the space issue. The evidence does not establish any justification for Mr. Morris' intentional disregard of the instructions he was given. His actions resulted in a substantial monetary loss to the employer since the additional weight of the pallets damaged product. Given his history and the warnings he received, the administrative law judge concludes that substantial misconduct has been established by the evidence. Accordingly, benefits are denied.

Mr. Morris has received benefits since filing his claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If an overpayment results from

the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. Benefits will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Mr. Morris will be required to repay benefits already received.

DECISION:

The representative's decision dated October 17, 2008, reference 01, is hereby reversed. Mr. Morris was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Morris will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs