

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

MIKE E HEATER
1305 – 2ND AVENUE #2
ROCK ISLAND IL 61201

INTERSTATE BRANDS CORP
C/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-00095-BT
OC: 11/30/03 R: 04
Claimant: Respondent (2)

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.

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 for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Interstate Brands Corporation (employer) appealed an unemployment insurance decision dated December 23, 2003, reference 01, which held that Mike Heater (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 28, 2004. The claimant participated in the hearing. The employer participated through Robert Feagen, Human Resources Manager, and Jamie Berkley, Production Supervisor.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time laborer from May 12, 1994 through November 26, 2003. The claimant was discharged for insubordination and creating a hostile work environment. On December 26, 1996 he was suspended and received a last-chance warning for gross insubordination after being disrespectful towards a supervisor. The claimant was aware that he would be discharged for additional incidents of insubordination. He was suspended again and received another last-chance warning on August 15, 1999 for creating a hostile work environment by passing around a condom. On November 18, 2003 the claimant was questioning why a female break person was doing a particular job since he did not think she could do the job. The claimant felt he had the authority to do so as he was a union steward. The claimant claims he stated that the break person "didn't know what the hell she was doing." The supervisor stated the claimant kept yelling comments like, "If she can't do the fucking job. . . ." The supervisor became involved and advised the claimant his behavior was unacceptable and that he would be sent home if there were any more incidents. The break person questioned the claimant as to why he was cussing at her. The following day, the claimant began questioning the production supervisor as to how the supervisor was handling certain employees' breaks. The production supervisor advised the claimant to quit questioning him and to not harass anyone else about it. The claimant became angry and left. He went directly out to the floor and began questioning another employee about his breaks. That employee called for the production supervisor to come to the production floor as the claimant was harassing him. The production supervisor confronted the claimant about it. The claimant stated he could say what he wanted. The claimant continued to argue with the production supervisor and was directed to go to the office but the claimant refused. The production supervisor then directed the claimant to go home but he also refused that directive. The production supervisor had to call another member of management before the claimant left. The claimant was suspended pending further investigation and was subsequently discharged on November 26, 2003.

The claimant filed a claim for unemployment insurance benefits effective December 23, 2003 and he has received benefits after the separation from employment in the amount of \$1,800.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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 Section 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 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was discharged for repeated insubordination and creating a hostile work environment. Although the claimant's perspective of what transpired does differ slightly from the employer's, his version of the events is sufficient to establish he was insubordinate and did create a hostile work environment. He testified that on November 18, 2003 he was questioning why another employee was doing a particular job. He admitted that he did not think she could do the job properly and stated she did not know what the "hell" she was doing. He said that the employee later questioned him as to why he was cussing at her so he obviously said something loud enough for her to hear it. The claimant had no supervisory capacity but repeatedly stated that he had the authority to question what was going on since he was a union steward. Later testimony revealed there was a grievance procedure for addressing problems in the workplace. The production supervisor had the claimant report to the office that day, where he was warned that his behavior was unacceptable and that he would be sent home if problems continued. The claimant admitted questioning the production supervisor the following day as to how the supervisor was handling the breaks. The claimant admitted he became angry and subsequently questioned another employee about how he was taking his breaks. The other employee is the individual who called for the production supervisor as he claimed the claimant was harassing him. The claimant admitted he would not leave per the production supervisor's directive and only left after speaking with another member of management. The claimant's

conduct demonstrates 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 and benefits are denied.

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 unemployment insurance decision dated December 23, 2003, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until 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 claimant is overpaid benefits in the amount of \$1,800.00.

sdb/b