

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One and Two, the administrative law judge finds: The claimant was employed by the employer as a full-time general manager from late 2003 until he was discharged on July 25, 2005. The claimant was discharged for misappropriating employer's funds. When the claimant was hired, he was provided a residence which included an office for the employer. The claimant paid no rent for the residence. However, the claimant was expected to pay the full utility bill for the residence. For the utilities used by the office portion of the residence the claimant was initially paid \$100.00 per month for the utilities associated with the office. This was raised to \$175.00 per month at the beginning of 2005. The claimant received this money and then was to pay the entire utility bill. However, since approximately October 6, 2004, the claimant was keeping the stipend from the employer for the utilities and, nevertheless, paying for his utilities from the employer's general funds. The employer learned of this in early July of 2005 and, after investigating the matter, discharged the claimant on July 25, 2005. The claimant was also discharged for unauthorized use of the employer's gasoline credit card. The claimant purchased gas in Minnesota while on personal business but charged it to the employer's credit card. The employer's credit card was to be used only for the employer's business. The claimant received no warnings or disciplines for these matters. The claimant wrote the employer two letters dated July 15, 2005 and August 4, 2005 as shown at Employer's Exhibits One and Two. Pursuant to his claim for unemployment insurance benefits filed effective July 24, 2005, the claimant has received unemployment insurance benefits in the amount of \$1,067.00 as follows: \$8.00 for benefit week ending July 30, 2005 (earnings \$345.00) and \$353.00 per week for three weeks from benefit week ending August 6, 2005 to benefit week ending August 20, 2005.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is.

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's witness, Phil Enabnit, President of the Employer's Board of Directors, credibly testified that the claimant was discharged on July 25, 2005. Mr. Enabnit credibly testified that the claimant did not and had not resigned at that time. Accordingly, the administrative law judge concludes that the claimant was discharged on July 25, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct.

The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witnesses credibly testified that, as part of the claimant's employment, he was provided a residence including an office for the employer. The claimant had to pay no rent for this residence. However, the claimant was to pay the entire utility bill from his own funds. To offset the utility costs for the office part of the residence the employer initially gave the claimant \$100.00 per month and then increased that to \$175.00 per month at the beginning of 2005. Nevertheless, beginning approximately October 6, 2004, the claimant paid the entire utility bill from the employer's general funds. The claimant concedes as much in his letters at Employer's Exhibits One and Two. The claimant had no authorization to do so. In addition, the employer's witnesses credibly testified that the claimant used the employer's gasoline credit card for personal use when the credit card was to be used only for the employer's business. There is no evidence to the contrary.

The administrative law judge concludes on the record here that the claimant did misappropriate the employer's funds by paying his utility bills using the employer's general funds and further by using the employer's gasoline credit card for personal use. The administrative law judge further concludes that this misappropriation was a material breach of his duties and obligations arising out of his worker's contract of employment and evinces a willful or wanton disregard of the employer's interests and is disqualifying misconduct. Therefore, the administrative law judge

concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits from and after July 25, 2005. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

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.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,067.00 since separating from the employer herein on or about July 25, 2005 and filing for such benefits effective July 24, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of August 25, 2005, reference 02, is reversed. The claimant, Robbie G. Wright, is not entitled to receive any unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct. He has been overpaid unemployment insurance benefits in the amount of \$1,067.00.

srs/kjw