

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASEY BONNICHSEN
Claimant

APPEAL NO: 10A-UI-00724-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

OC: 01/25/09
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

The Hon Company (employer) appealed an unemployment insurance decision dated January 7, 2010, reference 01, which held that Casey Bonnichsen (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 February 8, 2010. The claimant participated in the hearing. The employer participated through Josh Blair, MCR Generalist and Bill O'Neill, Employer Representative. Employer's Exhibits One and Two were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 considered all of the evidence in the record, finds that: The claimant was employed as a full-time production support employee from October 2, 1985 through November 23, 2009. He was coached on August 19, 2009 for unacceptable treatment of a co-worker when he, "proceeded to flip the member off." On November 20, 2009 the employer was advised the claimant was throwing a knife of some kind at cardboard packaging during work hours. The employer questioned the claimant about this and the claimant denied throwing any type of object at the boxes. The employer uses the cardboard boxes to package product that is sent out and there were several boxes where the claimant was working that had up to 50 holes from some sort of a sharp instrument.

Co-employee Brenda Clark witnessed the claimant throwing a knife type object at boxes in the corner of the packaging area of the crib. The claimant saw Ms. Clark looking at him but continued to throw the object at the boxes. Ms. Clark believes that the claimant is in a dart league and assumed he was practicing. She believed what he was doing was unacceptable and had concerns about possible retaliation for reporting him to the employer.

Co-employee Paul Haller also witnessed the claimant throwing a sharp object at the cardboard boxes. He indicated the object was some type of homemade knife, possibly half of a pair of scissors taped on one end. The claimant was throwing it at the protective wrap around the cardboard packaging. Mr. Haller's complaint was that the claimant had plenty of work to do so questioned why he was wasting time doing this. Mr. Haller reported that the claimant admitted to him that when he was questioned by the employer about throwing an object at boxes, he denied it.

Co-employee Chad Healey also witnessed the claimant throwing a sharp knife-like object at the packaging on other days and he believed it was a pocket knife. Mr. Healey had never reported the claimant's conduct and his biggest complaint was why the claimant was not helping someone else in the crib if his work was done. The claimant was questioned again by the employer and he admitted throwing a sharp knife-like object at the packaging boxes while on the clock. He denied the same at the hearing and claimed he was only keeping the scissors in the side of the box. The employer determined the claimant's actions were unprofessional and inappropriate. The claimant was discharged for violation of company policy regarding member conduct in the workplace.

The claimant filed a claim for unemployment insurance benefits effective January 25, 2009 and has received benefits after the separation from employment.

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 § 96.5-2-a.

Iowa Code § 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 on November 20, 2009 for throwing a knife-like object into the employer's cardboard boxes, thereby ruining the boxes from being used. The evidence is overwhelming that he had done this repeatedly even though he denied it at the hearing. Any reasonable person would know that throwing a knife or knife-like object at the employer's property while on the clock is unacceptable. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as 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 and benefits are denied.

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated January 7, 2010, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css