

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES W SELL**  
Claimant

**APPEAL NO. 07A-UI-01599-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**R J PERSONNEL INC  
TEMP ASSOCIATES**  
Employer

**OC: 01/21/07 R: 04  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated February 9, 2007, reference 01, which allowed benefits based upon the claimant's separation from this employer. After due notice was issued, a hearing was held by telephone conference call on February 28, 2007. Although notified, the claimant did not participate. The employer participated by Mike Thomas, Account Manager.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work and whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having reviewed the evidence in the record, the administrative law judge finds: Mr. Sell was employed by the captioned temporary employment service from September 18, 2006 until January 22, 2007 when he was discharged from employment. Mr. Sell was assigned to work at the HWIT Company as a maintenance worker and was paid by the hour. The claimant was discharged for failing to report or to provide notification as required by company policy. Mr. Sell had previously been warned for failure to report without providing notification and was aware that further occurrences could result in his termination from employment. The claimant had volunteered to work on January 20, 2007, but did not report or notify the employer as required. As the claimant had been specifically warned for this offense in the past, he was discharged from employment. Mr. Sell was aware of the company requirement and had provided notification at times in the past.

**REASONING AND CONCLUSIONS OF LAW:**

The claimant was discharged following his failure to report for scheduled work as agreed on January 20, 2007 and his failure to provide notification of his impending absence as required by policy. Mr. Sell was aware that he was required to provide notification of impending absences

and had been specifically warned in the past. The claimant was aware that failure to provide notification when unable to report would result in his termination from employment.

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.

For the reasons stated herein the administrative law judge concludes that misconduct has been established. Accordingly, 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. The claimant is overpaid benefits in the amount of \$519.00.

**DECISION:**

The decision of the representative dated February 9, 2007, reference 01, is reversed. The claimant was discharged for misconduct. Unemployment insurance benefits shall be withheld

until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$519.00.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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