

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT REDDEL

Claimant

APPEAL NO. 07A-UI-00560-ET

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

KASTIM CORPORATION

Employer

**OC: 10-08-06 R: 01
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 11, 2007, reference 06, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 21, 2007. The claimant provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Krista Schmitz, Store Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time second assistant manager for McDonald's from November 12, 2006 to December 14, 2006. The employer's policy requires employees to call in four hours before the start of their shift if they are not available to work. On November 15, 2006, the claimant called in at 8:30 a.m. for his 9:00 a.m. shift and stated he was ill. On November 24, 2006, he called at 6:30 a.m. for his 7:00 a.m. shift and said he would be an hour late. At 10:22 a.m. the employer called his home and his wife stated he was waiting for a check to pay his rent. At 3:02 p.m. the employer called again and the claimant's wife said he was out doing errands and she did not know if he had enough gas to get to work or enough minutes on his phone to call the employer back. On November 25, 2006, the employer issued a written warning to the claimant stating his attendance was not acceptable and may lead to suspension or termination. On November 28, 2006, the owner spoke to the claimant because the store manager did not believe the claimant took the November 25, 2006, warning seriously. He was told at that time that if he missed any more work in the next 30 days his employment would be terminated. On December 5, 2006, the claimant's wife had a baby and he did not work December 6, 2006. On December 7, 2006, he called in and stated he had to go to DHS to pick up diapers and formula and would not be in that day. On December 14, 2006, the claimant was

scheduled to work at 11:00 a.m. and his wife called and said his car would not start. The employer asked why he had not called himself as was the employer's policy and the claimant's wife stated he was trying to reach a mechanic. The employer terminated his employment for excessive unexcused absenteeism after he missed five of his scheduled 25 shifts.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant may have been ill November 15, 2006, his other four absences were not related to illness and were not excused. Additionally, the claimant did not properly report any of his absences according to the employer's policy. The administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and

obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). 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 January 11, 2007, reference 06, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 \$2,344.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css/pjs