

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RUBEN ADAMS

Claimant

BROWN CUSTOMER DELIGHT GROUP INC

MCDONALDS

Employer

APPEAL NO. 14A-UI-10647-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/14/14

Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Brown Customer Delight Group, Inc. (employer) appealed an unemployment insurance decision dated September 30, 2014, (reference 01), which held that Ruben Adams (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing began on November 3, 2014, and was completed on November 7, 2014. The claimant participated in the hearing. The employer participated through owner Larry Brown, Office Manager Kelly Betts, Hearing Representative Diana Perry-Lehr, and Claims Specialist Karol Sleep. Claimant and Employer Joint Exhibits One through Seven were admitted into evidence.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time general manager from July 10, 2013, through September 10, 2014, when he was discharged for unprofessional behavior/poor performance. The employer coached and/or counseled the claimant on the following dates in 2014: March 31, May 28, June 5, July 17, and August 11. He was placed on probation for 60 days on July 17, 2014. On August 27, 2014, there was a "glitch" with the paychecks and the owner went out of his way to personally sign hundreds of checks so the employees could be paid. The claimant was sent out at 6:24 p.m. to deliver the checks to three different stores so the employees could receive them since they were already late. However, the claimant did not deliver the checks until 8:47 p.m. because he went to cash his own paycheck so he could pay

his rent. He did not think it was his job to deliver the paychecks even though the employer had directed him to do so. The employer received complaints from a minor employee and her parent that the claimant called this employee "Ratchet" even after he was told to stop. The claimant admitted calling the employee "Pocahontas" but denied calling her "Ratchet."

On August 30, 2014, two written warnings were given to the claimant addressing the check delivery and the name-calling. The claimant was suspended before he left on vacation and subsequently discharged before he returned from vacation. The issues which prompted the termination were the claimant's failure to immediately deliver late checks on August 27, 2014; his violation of labor laws by scheduling a minor for more hours than permissible; terminating employees without the consent of the owner; repeatedly calling a minor employee something other than her name; and disregarding repeated directives about not contacting the store after he was suspended.

The claimant filed a claim for unemployment insurance benefits effective September 14, 2014, and has received benefits after the separation from employment in the amount of \$1,664.00. Claims Representative Karol Sleep participated in the fact-finding interview and numerous documents were submitted on behalf of the employer.

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. 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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on September 10, 2014, for repeated unprofessional behavior, failure to follow directives and violation of company and state laws. He contends he was discharged for behavioral issues not performance issues but the employer says they are one and the same. 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant received benefits in the amount of \$1,664.00 as a result of this claim. A waiver cannot be considered because the employer participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount.

DECISION:

The unemployment insurance decision dated September 30, 2014, (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 \$1,664.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs