

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

AMENDED

Appeal Number: 04A-UI-09495-DWT
OC: 08/01/04 R: 02
Claimant: Respondent (2)

DAVID A LYALL
1202 – 11TH ST APT 12
WEST DES MOINES IA 50265

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

SEARS ROEBUCK & COMPANY
C/O TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Sears Roebuck & Company (employer) appealed a representative's August 24, 2004 decision (reference 01) that concluded David A. Lyall (claimant) was qualified to receive unemployment insurance benefits, and the employer's account could be charged for benefits paid to the claimant because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 21, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Tracy Benson, the loss prevention manager, appeared on the employer's behalf. 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.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on December 30, 1989. He worked as a full-time sales technician in the automotive department. The claimant received on-line training regarding the employer's code of conduct. The employer does not tolerate alcohol at work.

On July 21, 2004, the claimant brought beer to work and placed the beer in a refrigerator at work. The claimant drank a beer at work at the end of his shift. When the claimant returned to work on July 23 there were three beers in the refrigerator instead of five. During a routine walk through of the employer's facility, the employer discovered the beer in the refrigerator. The employer discharged the claimant on July 23, 2004 for bringing beer to the workplace.

The claimant established a claim for unemployment insurance benefits during the week of August 1, 2004. He filed a claim for benefits for the week ending August 7, 2004. He received \$304.00 in benefits for this week.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known the employer did not allow employees to bring beer to work, keep beer in a refrigerator or drink beer on the employer's premises. Without any explanation from the claimant as to why he brought the beer to work and drank a beer on the employer's premises, the evidence indicates the claimant intentionally and substantially disregarded the standard of behavior the employer had a right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected misconduct. As of August 1, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the week ending August 7, 2004. He has been overpaid \$304.00 in benefits he received for this week.

DECISION:

The representative's August 24, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of August 1, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the week ending August 7, 2004. He has been overpaid \$304.00 in benefits he received for this week.

dlw/tjc/kjf