

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY HANSEN
Claimant

APPEAL NO: 11A-UI-12541-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

C3 CUSTOMER CONTACT CHANNELS
Employer

**OC: 07/24/11
Claimant: Respondent (2/R)**

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

STATEMENT OF THE CASE:

C3 Customer Contact Channels (employer) appealed an unemployment insurance decision dated September 16, 2011, reference 02, which held that Gregory Hansen (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 October 17, 2011. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Ginnie Hebb, Director of Employee Relations and Compliance and Jeff Barocas, Director IT Infrastructure. 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 claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

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 network engineer from April 11, 2011 through July 29, 2011 when he was discharged for a repeated failure to follow directives. The employer is a large data and voice network provider for fortune 500 companies. The claimant was responsible for maintaining the health and integrity of seven network sites so that services can be provided to these companies as required.

The claimant's performance in his three-month employment includes several examples of a complete disregard of the employer's policies. He was a no-call/no-show on an unknown date. The employer finally called him at noon and the claimant answered his phone. When the employer asked where he was, the claimant said he had a family emergency. The employer advised the claimant that he had to call in to report his absence if he was not going to be at work. The claimant was also scheduled for two network interface meetings for clients with

technical calls and the claimant needed to be present but he failed to participate. The meetings had been scheduled in advance on his computer calendar and when questioned as to his absence, he merely claimed that he did not remember the meetings.

The most disruptive disregard of his duties and the employer's policies resulted in network outage issues on two occasions. He did not follow testing procedures and the network went down which affected revenue and impacted agents. After the first time this occurred, Director Jeff Barocas had a 'face-to-face' meeting with him on June 30, 2011 to stress the importance of the claimant's work and how it impacts the company. Mr. Barocas followed up that meeting with an email to make sure the claimant also knew that it was critical that he be available if and when any problems occurred.

The second network outage resulted in the claimant's termination. He put in place a scheduled change on the network on July 28, 2011 and he was off work on the following day. It was a change in the route statement or an IP address and the claimant told Mr. Barocas it was not a significant change. However, he did not properly test the change before leaving as required. When the agents signed on to the computer on the following morning, the computer went down. Mr. Barocas repeatedly attempted to reach the claimant but could not contact him. The network outage affected about 250 agents and the employer was finally able to get another technician to fix it. The claimant called the employer at noon and said he had been on a plane, which was a surprise. The employer discharged the claimant at that time.

The claimant filed a claim for unemployment insurance benefits effective July 24, 2011 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 July 29, 2011 for his repeated failure to follow directives even though he was more than capable of doing so. A repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant repeatedly demonstrated an intentional and substantial disregard of the employer's interests and of his duties and obligations to the employer. His refusal to follow directives shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee. 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 September 16, 2011, reference 02, 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/pjs