

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES F GROSVENOR
Claimant

APPEAL NO: 14A-UI-12572-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILTON WORLDWIDE INC
Employer

OC: 11/02/14
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.3(7) – Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 26, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant responded to the hearing notice, but was not available for the January 5 hearing. A message was left for the claimant to contact the Appeals Bureau immediately if he wanted to participate at the hearing. The claimant did not call to participate in the hearing. Michelle Clark, the director of human resources, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits and has been overpaid benefits.

ISSUES:

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

Has the claimant been overpaid benefits he has received since November 2, 2014?

FINDINGS OF FACT:

The claimant started working for the employer in May 2013. The employer hired the claimant to work as a full-time engineering supervisor. The claimant worked primarily at night. The employer's Internet policy does not allow employees to use the employer's Internet at work for personal reasons.

Shortly before October 20, 2014, the employer found the claimant's printed resume at work. The employer then investigated the claimant's use of the employer's Internet. On October 20, the claimant's supervisor, R.B., talked to the claimant and told him he could not use the employer's Internet at work for personal reasons. Instead of browsing the Internet, the employer expected the claimant to walk through the hotel and work.

On October 27, the employer reviewed the claimant's Internet history from the night before. The employer discovered the claimant was still sending out resumes and responding to job applications. The employer also discovered the claimant was looking at sex web sites at work. When Clark talked to the claimant, he admitted his supervisor told him he could not use the employer's Internet for personal reasons, that he had been using the employer's Internet to look for work by sending his resume to potential employers and had looked at "sex" web sites at work.

On October 31, 2014, the employer discharged the claimant for violating the employer's Internet usage policy and for insubordination by failing to follow his supervisor's October 20 directions. The claimant established a claim for benefits during the week of November 2, 2014. He filed for and received benefits for the weeks ending November 8 through December 27, 2014. He received his maximum weekly benefit amount of \$416 for each of these weeks. Clark did not receive a call to participate at the fact-finding interview.

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. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

On October 20, the claimant was told and knew the employer did not allow him to use the employer's Internet for personal reasons. Sending resumes at work to potential employers to obtain other employment violates the employer's Internet usage policy. Also, the claimant failed to follow his supervisor's October 20, 2014 instructions when he continued sending out resumes and looked at "sex" web sites at work. The claimant intentionally and substantially disregarded the employer's interests and instructions. The claimant committed work-connected misconduct. As of November 2, 2014, the claimant is not qualified to receive 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). Based on this decision, the claimant is not legally entitled to receive benefits as of November 2, 2014. He has been overpaid \$3328 in benefits he received for the weeks ending November 8 through December 27, 2014.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the

employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)a, b. Since the employer's witness asserted she was not called for the fact-finding interview, the issue of whether the claimant is required to pay back the overpayment or the employer's account will be charged this amount is remanded to the Benefits Bureau to decide if the employer satisfied the participation requirement of the law.

DECISION:

The representative's November 26, 2014 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of November 2, 2014, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible.

The claimant has been overpaid \$3328 in benefits he received for the weeks ending November 2 through December 27, 2014. The issue of whether the claimant is required to pay back the overpayment or if the employer's account will be charged is **Remanded** to the Benefits Bureau to decide if the employer satisfied the participation requirements of the law.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs