

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS A HAGEMANN
Claimant

APPEAL NO. 10A-UI-10423-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAPITOL RESOURCES INC
Employer

OC: 06/20/10
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 20, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 8, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Nicole Schlinger participated in the hearing on behalf of the employer with a witness, Chad Foster.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked for the employer as a telephone fundraising representative from February 3, 2010, to June 15, 2010. The claimant had been verbally warned by his supervisor about taking unauthorized breaks.

The employer discharged the claimant on June 15, 2010, for taking excessive breaks on June 14, 2010. He took a 42-minute supper break instead of the 30-minute break he was authorized to take. His supervisor warned him about overstaying his break. The claimant violated that warning by taking a 16-minute break at 9:00 p.m. instead of the 10-minute break he was authorized to take. The claimant then took another unauthorized break at 10:12 p.m. for 14 minutes. The claimant was on the phone during his break discussing some medication issue regarding his father with a nursing home that the father was in.

The claimant filed for and received a total of \$1,624.00 in unemployment insurance benefits for the weeks between June 20 and September 18, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of the break policy was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. The claimant asserts he did not have any control over the calls because he was his father's power of attorney and the nursing home was calling him, but he simply needed to inform whoever was calling that he was at work and could only talk to them for whatever the length of the break was and then stop talking and go back to work when the time was up.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated June 20, 2010, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css