

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRADLEY G BOOTSMA**  
Claimant

**APPEAL NO: 13A-UI-11190-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STAPLES CONTRACT AND COMMERCIAL**  
Employer

**OC: 09/08/13**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's September 27, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because he had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing. Matthew Gaul, the human resource manager, Heather Puhrmann, the shipping coordinator, Bobbi Wielenga, the shipping supervisor, and Eunice Koopmans, the distribution manager, 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.

**ISSUES:**

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

Has the claimant been overpaid any benefits?

**FINDINGS OF FACT:**

The claimant started working as a full-time shipper for the employer in September 2012. When the claimant started working, he received a copy of the employer's written policy. The policy in part informs employees they will be discharged if they engage in violence at work and use vulgarity.

Although the claimant's job was not in jeopardy before August 30, he had previously lost his temper at work.

On August 30, 2013, the employer warned the claimant there would be late boxes of product to ship out because of a rush order. At 4:58 p.m. or two minutes before the claimant was scheduled to leave, Puhrmann brought him three or four boxes to ship out that day. After Puhrmann told the claimant that she could not ship out the product, the claimant became upset and yelled and swore at her. While he was upset, he punched a hole in some boxes. Puhrmann asked him to stop. After the claimant told Puhrmann to f\_\_\_\_\_ leave, she did not. The claimant shipped the product Puhrmann gave him to ship.

The next work day, September 3, Wielenga talked to employees who witnessed the August 30 incident. (Employer Exhibits One and Two.) The claimant told the employer he was tired of late rushes and wanted to get off work. When Koopmans talked to him she reminded him that what he had done on August 30, swearing at Puhmann and punching a hole in a box, was not acceptable. The claimant just indicated he had been tired. The employer discharged the claimant on September 4, 2013, because he violated the employer's workplace violence policy and swore at Puhmann on August 30, 2013.

The claimant established a claim for benefits during the week of September 8, 2013. He has filed claims for the weeks ending September 14 and 21. He received his maximum weekly benefit amount of \$310 for each week.

The employer is represented by a third party company in unemployment insurance matters. The employer did not know if the employer's representative participated 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).

Based on the evidence presented at the hearing, the claimant had been told earlier there would be some last minute shipping he would have to do on August 30. While it is unfortunate that the last minute shipping was brought to him two minutes before the end of his shift, his August 30 conduct – swearing at the shipping coordinator and punching a hole in a box because he was angry – amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from him. The claimant committed work-connected misconduct. Therefore, he is not qualified to receive benefits as of September 8, 2013.

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 for the weeks ending September 14 and 21, 2013. He has been overpaid \$620 in benefits for these weeks.

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 did not know if their company representative participated at the fact-finding interview, this issue is remanded to the Claims Section to determine. The issue of whether the employer participated at the fact-finding interview determines if the claimant is responsible for paying back \$620 or whether the employer will be charged this amount.

**DECISION:**

The representative's September 27, 2013 determination (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 8, 2013. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible.

The claimant is not legally entitled to receive benefits for the weeks ending September 14 and 21, 2013. He has been overpaid \$620 in benefits he received for these weeks.

The issue of whether the employer participated in the fact-finding interview is **Remanded** to the Claims Section to determine. If the employer participated, the claimant is responsible for paying back the overpayment to the Department. If the employer did not participate at the fact-finding interview, the employer will be charged \$620.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs