

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFF LAPPE
Claimant

UTILITY LINES CONSTRUCTION SERVICE
Employer

APPEAL 21A-UI-21515-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/27/21
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge from Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

On September 27, 2021, employer Utility Lines Construction Service filed an appeal from the September 15, 2021 (reference 01) unemployment insurance decision that allowed benefits after a separation from employment. The parties were properly notified of the hearing. A telephonic hearing was held at 3:00 p.m. on Thursday, November 18, 2021. The claimant, Jeff Lappe, did not register a telephone number and did not participate in the hearing. The employer, Utility Lines Construction Service, participated through Chris Stewart, Lines Manager; and Tina Hayes, Business Manager. Employer's Exhibit 1, pages 1 through 3, was received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged from employment for disqualifying, job-related misconduct?
Was the claimant overpaid regular unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time with the employer, most recently as an overhead line foreman, from October 6, 2008, until June 28, 2021, when he was discharged.

In mid-June 2021, the employer began receiving reports from employees in the field that indicated there may be discrepancies in claimant's timesheets. Based on these reports, the employer began reviewing claimant's timesheets and his work vehicle GeoTab reports to confirm he had been working and honestly reporting his time. Stewart and others noticed unusual straight lines appearing on the GeoTab reports that did not correspond with roads or routes that claimant would have traveled.

After researching and talking with GeoTab, the employer discovered that claimant was likely using a GPS jamming device to impair the GPS tracking in his work vehicle. GPS jamming devices are illegal to use in the United States, as they can impede 911 and emergency

communications, air traffic control communications, and other communications necessary to ensure public safety. The employer reviewed claimant's work vehicle travel and his timesheets and determined he had used the GPS jamming device over twenty-five times between March and June 2021. Additionally, on June 25, 2021, the employer was able to locate a GPS jamming device in the work vehicle that claimant regularly operated and confiscated it for evidence.

On Monday, June 28, 2021, the employer met with claimant to confront him with the findings regarding his behavior. Claimant admitted to using the GPS jamming device, as he did not like other people following him and "spying" on him. He also admitted to not working at all times when he reported that he was working, and he stated that on some occasions he reported he was working and never, in fact, left his house. Claimant was discharged that day for using an illegal GPS jamming device and for falsifying his timesheets.

Stewart testified regarding the harm posed by both the GPS jamming device and the falsification of timesheets. Claimant had never been warned for any similar conduct. Under a Letter of Agreement between the employer and the IBEW, employees are prohibited from "performing or leaving work in a condition that jeopardizes the life, limb, or property of the customer, employer, employees, or the public."

The administrative record reflects that claimant has received no unemployment since filing a claim with an effective date of June 27, 2021. Claimant's claim is currently locked for a reason other than this separation from employment. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a first-hand witness available for rebuttal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

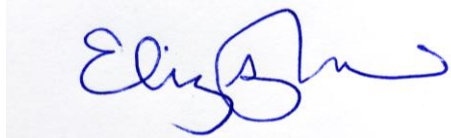
In this case, the employer has presented substantial and credible evidence that claimant used a GPS jamming device, which is illegal, to assist him in stealing time from the employer. By employing this illegal device, claimant could have put himself, his coworkers, or the community in danger. His conduct also exposed his employer to substantial liability. Additionally, claimant was outright stealing from the employer by claiming that he was working when he was not and receiving wages for time when he was performing no work. Claimant's conduct is in clear and deliberate disregard of his duties to the employer and is disqualifying misconduct even without prior warning. Benefits are withheld.

As claimant has not received any benefits since separating from this employer, the issues of overpayment and chargeability are moot.

DECISION:

The September 15, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 issues of overpayment and chargeability are moot.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

December 29, 2021
Decision Dated and Mailed

lj/mh