

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASTON KEMP
Claimant

APPEAL NO: 08A-UI-02143-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 01/20/08 R: 03
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The University of Iowa (employer) appealed an unemployment insurance decision dated February 25, 2008, reference 01, which held that Aston Kemp (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 April 2, 2008. The claimant participated in the hearing. The employer participated through David Burgeon, Human Resources Specialist; Michele Hogue, Human Resources Coordinator for the Department of Epidemiology; and Kay Shie, Director of Human Resources for the College of Public Health. 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 employer discharged the claimant for work-related misconduct.

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 research assistant from November 12, 2007 through January 24, 2008. He was discharged for falsifying his academic credentials when he claimed he had a bachelor's degree in business administration. The research assistant position requires a bachelor's degree and the claimant's job offer was contingent upon his satisfactory criminal background review and credential check. After the claimant was hired, the employer began confirming his academic credentials and had difficulty reaching someone from the American InterContinental University (AIU) which is where he reportedly earned his degree. The AIU is a web-based campus with its classes on-line. When the employer connected with someone from AIU near the end of November 2007, it was reported the claimant does not have a degree from AIU and had only taken two classes on-line. The employer went back to him and the claimant indicated that his school loans were in collections so that could be why AIU claims he did not have a degree. The employer asked the claimant to provide a copy of his diploma and he subsequently provided a diploma. AIU

subsequently confirmed that the diploma document provided by the claimant was fraudulent and not an AIU diploma.

The employer continued to investigate the matter while giving the claimant the benefit of the doubt and allowing him some additional time to prove he earned his degree. He contends that his financial problems were the issue and that AIU was not releasing his degree because of that. The employer spoke to the claimant on January 9 and January 11, 2008 and he claimed that he had left a message with student records but did not know the person's name. The employer followed up with an AIU employee named Lorna Thompson but was unable to obtain confirmation. The claimant signed a release so the employer could talk to William Bates, the director of AIU student accounts. The employer talked to Mr. Bates on January 16, 2008 and explained that the claimant's loans were in collection and that was why he believed the school was not releasing the correct information. Mr. Bates assured the employer that was not the case. The employer finally advised the claimant he was being terminated on January 24, 2008 due to his inability to document his academic credentials. However, even after that, the employer advised the claimant if he was able to provide verification of his degree, that he could still provide it to the employer.

The claimant filed a claim for unemployment insurance benefits effective January 20, 2008 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 for falsifying his academic credentials by claiming he earned a bachelor's degree when he had not done so. A bachelor's degree was a requirement of the position for which he was hired. There is no question the claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The only question that remains is whether he was discharged for a past act.

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge or disciplinary suspension for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988). The employer learned at the end of November 2007 that AIU denied the claimant earned a degree from its university but the employer believed the claimant and allowed him additional time based on his explanations. To an outside observer, the length of time the employer gave the claimant to prove what could not be proven was excessive and generous. However, the employer was acting in good faith on the assumption that the claimant was acting in good faith. The final date of investigation occurred on January 16, 2008 when the employer spoke to the AIU director of student accounts who confirmed the claimant did not have a bachelor's degree from AIU. Consequently, the issue becomes whether there was an unreasonable delay between January 16, 2008 and January 24, 2008 when the discharge occurred. The administrative law judge does not find one week's delay to be unreasonable in this case and finds the claimant was discharged for a current act. 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:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated February 25, 2008, reference 01, 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 claimant is overpaid benefits in the amount of \$3,263.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs