

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD R WALZER
Claimant

APPEAL NO. 100-UI-02748-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALL CLEAN OF IOWA INC
Employer

OC: 10/04/09
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

All Clean of Iowa, Inc. filed an appeal from a representative's decision dated November 25, 2009, reference 02, which held that no disqualification would be imposed regarding Richard Walzer's separation from employment. After due notice was issued, a hearing was held by telephone on January 12, 2010. The January 21, 2010 decision of the administrative law judge reversed the allowance and assessed an overpayment. Mr. Walzer appealed to the Employment Appeal Board, which, on February 17, 2010, remanded the matter for a new hearing because Mr. Walzer had not received timely notice of the hearing.

Pursuant to the remand order, due notice was issued scheduling a hearing for June 28, 2010. Mr. Walzer participated personally. The employer participated by Emmett Schnathorst, Owner. The hearing was recessed and concluded on June 30, 2010.

ISSUE:

At issue in this matter is whether Mr. Walzer was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Walzer was employed by All Clean of Iowa, Inc. from February of 2009 until September 22, 2009 as a full-time laborer. He worked in the shop and at customer locations as a grease trap operator. He was discharged after receiving a series of warnings.

Mr. Walzer received a written warning on March 1, 2009 because of a complaint from Mercy Hospital. The crew had failed to clean up after performing work on February 20 and 21. He received another written warning on April 23 because he failed to stay at the job site until all work was completed. His next warning was on May 27, when he was written up for not getting a truck from Pioneer Seeds as directed and for not being available for work the weekend of May 22 through May 25. Mr. Walzer received a written warning on June 18 because of a

complaint from Iowa Lutheran Hospital. The complaint was that the ovens were not cleaned properly in March, April, and June and that the residual chemicals were not wiped off, causing the ovens to smoke when turned on.

Mr. Walzer received a written warning on August 13 for not timely submitting his time sheet for the period August 1 through August 7. On August 19, he was written up for not submitting the time sheet for August 8 through August 14 timely. The warning also addressed the fact that he failed to respond to work-related calls on the company phone. The phone itself belonged to Mr. Walzer, but the employer assumed responsibility for it in March or April of 2009 so that he could be available on-call. On the warning of August 19, Mr. Walzer wrote that the employer should remove its number from the phone because he was not going to answer it again.

The next warning was on September 17 and was due to the fact that Mr. Walzer was late reporting for a job. He was late because he had been up late the night before doing grease traps. The decision to discharge Mr. Walzer was prompted by his refusal to sign a written warning dated September 22, 2009. He had signed all of his prior warnings. He signed one on August 13, 2009 and indicated that he was doing so under duress. The September 22 warning concerned the failure to perform oil changes on equipment as required.

The September 22 warning was presented to Mr. Walzer by the office manager and he indicated he would not sign it. He was told he would be discharged if he did not sign it and he still refused. As a result, he was discharged. He filed a claim for job insurance benefits effective October 4, 2009. He received \$2,878.14 in benefits on the claim. He filed a claim for extended benefits effective January 3, 2010 and received \$476.00 on the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Walzer's discharge was prompted by his refusal to sign a written warning on September 22, 2009. He refused in spite of knowing that he would lose his job if he did so. The refusal to acknowledge receipt of a written warning by signing it is misconduct as a matter of law. Green v. Iowa Department of Job Service, 299 N.W.2d 651 (Iowa 1980). The fact that he may have disagreed with the basis for the warning was not justification for refusing to acknowledge that it had been addressed with him.

Inasmuch as the refusal to sign the warning is misconduct in and of itself, the administrative law judge need not determine whether the remaining conduct complained of by the employer constituted misconduct. For the reasons stated herein, benefits are denied.

Mr. Walzer has received job insurance benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated November 25, 2009, reference 02, is hereby reversed. Mr. Walzer was discharged by All Clean of Iowa, Inc. on September 22, 2009 for disqualifying misconduct. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Walzer will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw