

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN C GREEN

Claimant

APPEAL NO. 08A-UI-01692-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO LC

Employer

**OC: 01-13-08 R: 02
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 6, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 5, 2008. The claimant did participate. The employer did participate through Lisa Rote, Manager and James Hertz, Sales Manager. Employer's Exhibit One was received.

ISSUES:

Was the claimant discharged for work-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a Sales Manager full time beginning in October, 2006 through January 7, 2008 when he was discharged.

The claimant falsified his time card on December 15, 22, and 29. On December 15 the claimant left work at 11:06 a.m. according to the employer's surveillance tapes but his time card showed that he worked until 3:30 p.m. On December 22 the claimant clocked in for work at 6:20 a.m. but did not arrive at work until 7:00 a.m. Also on December 22, the claimant left work at 12:09 p.m. but his time card showed he worked until 3:30 p.m. On December 29 the claimant left work prior to 2:23 p.m. but his time card showed he worked until 3:30 p.m. The claimant's time card and his arrival and departure times were verified by Lisa Rote and James Hertz who each viewed the surveillance tapes for the dates in question. The tapes show the claimant falsified the time he began and left work.

Prior to Ms. Rote's investigation in December 2007, in November 2007 she had warned the claimant that some of his coworkers were complaining that he was leaving early and not accurately representing the time he worked on his time card. The claimant knew that he was responsible for accurately filling out his time card.

The claimant was on vacation from December 31, 2007 through January 7, 2008 and thus not able to be questioned until he returned from vacation.

The claimant has received unemployment benefits since filing a claim with an effective date of January 13, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to 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.

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 established that the claimant was falsifying his time card and was stealing time from the employer. Theft of time from the employer constitutes disqualifying misconduct. 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 February 6, 2008, reference 01, decision is reversed. The 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 claimant is overpaid benefits in the amount of \$2,160.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs