

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSH A BOHRN**

Claimant

**APPEAL NO. 07A-UI-00828-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMMUNICATIONS DATA LINK LLC**

Employer

**OC: 12-17-06 R: 02  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 16, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 7, 2007. The claimant did not participate. The employer did participate through Charles Mutchler, General Manager and Matt Hanna, Equipment Operator.

**ISSUES:**

Was the claimant discharged for work related misconduct?

Has the claimant been overpaid 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 an operator full-time beginning November 20, 2006 through December 20, 2006 when he was discharged.

On December 8, 2006, the claimant asked another employee, Matt Hanna, to slow down and not work so hard. The claimant was not working as fast as he could and was encouraging another employee to slow down and not work as hard. The claimant was trying to get Mr. Hanna to slow down his production so that so much work would not be expected of him. Mr. Hanna reported the conversation to the employer who reported it to General Manager Charles Mutchler. Mr. Mutchler asked Mr. Hanna who was trying to get him to slow down. Mr. Hanna reported that the comment was made by Josh Bohrn. When Mr. Mutchler confronted the claimant, the claimant admitted to the owner that he had made the comment, but alleged that it was a joke. Neither Mr. Hanna nor Mr. Mutchler believed the claimant was joking. The claimant was discharged for slowing down work and for trying to encourage another to not work as fast as he could. The claimant has received unemployment benefits since filing a claim for benefits.

## 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 section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). Claimant's repeated failure to adequately and fully perform his job duties after having established the ability to do so is evidence of his willful intent not to do so and is misconduct. Benefits are denied.

The claimant worked slower than he could and tried to encourage another employee to work slower than he was capable of working. The claimant's action constitutes disqualifying misconduct. Benefits are denied.

Iowa Code section 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 January 16, 2007, 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 \$1,388.00.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/css