

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**MICHAEL J WHITE
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DES MOINES IA 50313**

**MANSIONS AT HEMINGWAY LLC
1500 S 70TH ST STE 201
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**MANSIONS AT HEMINGWAY LLC
6701 HEMINGWAY ST
JOHNSTON IA 50131**

**Appeal Number: 05A-UI-07516-SW
OC: 06/26/05 R: 02
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 15, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A hearing was held on August 22, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Kim Fosdick participated in the hearing on behalf of the employer with a witness, Jay Harder. Exhibit One was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a groundskeeper from September 2, 2003, to June 21, 2005. The claimant was informed and understood that under the employer's work rules, outside employment that interfered with his employment was prohibited and he was not to

use the employer's tools or equipment for other than business purposes without permission. In January 2005, the claimant was counseled about using company equipment in his own mowing business.

In June 2005, the claimant noticed that the woman next door to the townhouses where he was mowing was having a problem with her lawnmower. He approached her and asked if she was interested in him mowing the lawn in the future. He quoted her a price of \$30.00. The woman lived in a duplex and told the claimant that she would get back to him after talking to the person who lived in other duplex apartment. A couple of weeks later, the claimant noticed the woman's grass was long and used the employer's lawnmower to mow the lawn during working hours. The 15-by-60 foot lawn took less than five minutes to cut. The claimant knew that he was not to use the employer's equipment for non-business purposes but mowed it anyway. The employee working with the claimant later reported what he had done to management. On June 21, 2005, the employer discharged the claimant for using the employer's equipment for other than the employer's business without permission and for performing outside work during working hours.

The claimant filed for and received a total of \$1,455.00 in unemployment insurance benefits for the weeks between June 26 and August 13, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The claimant had been warned that he could not use the employer's tools or equipment for outside project without permission but did it anyway. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$1,455.00 in benefits for the weeks between June 26 and August 13, 2005.

DECISION:

The unemployment insurance decision dated July 15, 2005, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$1,455.00 in unemployment insurance benefits, which must be repaid.

saw/kjw