

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES E DAUGHENBAUGH**  
Claimant

**APPEAL NO: 06A-UI-08340-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE STAR INDUSTRIES INC**  
Employer

**OC: 07-23-06 R: 03  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 16, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 5, 2006. The claimant did participate. The employer participated through Bill Dykstra, Second Shift Plant Manager; Ken Showman, Safety Manager; and Bill Hood, General Manager. Claimant's Exhibit A was received. Employer's Exhibit One was received.

**ISSUES:**

Was the claimant discharged for work related misconduct?

Was the claimant 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 bender operator in the machine full-time beginning January 31, 2005 through July 26, 2006 when he was discharged.

The claimant began work on July 26, 2006 at 4:00 p.m., his normal starting time. Around 5:30 p.m. he spoke to Mr. Showman to ask him a question and Mr. Showman smelled alcohol on his breath. Mr. Showman asked Mr. Dykstra to speak to him to see if he too smelled alcohol on the claimant's breath. Mr. Dykstra said that he too smelled alcohol on the claimant's breath. Mr. Showman also had Mr. Hood speak to the claimant to see if he could smell alcohol on his breath. Mr. Hood did not smell alcohol on the claimant's breath. The claimant was called into a conference room where he was interviewed and asked if he had been drinking alcohol either at work or before work. The claimant initially said he had been drinking until five in the morning after the previous nights shift. The claimant later changed his explanation and admitted that he had consumed a couple of drinks in the morning when he was woken up by his wife getting ready to take their kids to the dentist. At hearing the claimant admitted he had a couple of shots of Jagemeister. The claimant was taken to Knoxville Hospital and a saliva test revealed an

alcohol level of .01. The claimant was then returned to the workplace where he was told he was terminated for reporting to work under the influence of alcohol. The claimant had received a copy of the employer's policies which prohibits drinking alcohol on the job or reporting to work under the influence of alcohol.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

### **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 claimant may not have believed he was too intoxicated to work, but the test results indicate that he was under the influence of alcohol. The employer's policy prohibits employees from working under the influence of any alcohol as they can be a danger to themselves or coworkers.

The claimant had received the policy. The claimant's actions, that is showing up for work after having consumed alcohol, 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 August 16, 2006, 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 \$2,647.00.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/cs