

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK S STICKLEY

Claimant

APPEAL NO. 07O-UI-05760-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC

Employer

**OC: 03-04-07 R: 03
Claimant: Respondent (2)**

Iowa Code § 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 March 26, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 26, 2007. The claimant did participate. The employer did participate through Roy Stillwagon, Staffing Consultant.

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: The claimant was last assigned to work at General Mills as production worker full time beginning on July 6, 2006 through March 4, 2007 when he was discharged.

The claimant was seen throwing a carton of product against a wall in the plant on March 4, 2007. Craig, a Remedy Supervisor, saw the claimant throw the product against the wall. On March 6, 2007 Mr. Stillwagon talked to the claimant and asked him what happened. The claimant admitted to Mr. Stillwagon that he had thrown the product against the wall. At hearing the claimant denied throwing the product against the wall. During the conversation with Mr. Stillwagon the claimant made no allegation that the product had flown off the line at him and that he was merely preventing the box of product from hitting him by deflecting it against the wall.

The claimant had not been disciplined for any similar behavior, that is for destroying the employer's property or product. The claimant has received unemployment benefits since filing a claim with an effective date of March 4, 2007.

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 claimant threw company product against the wall destroying it. At the time of the incident the claimant was seen by Supervisor Craig throwing the product. The administrative law judge is not persuaded that the product was flying off the line and was going to hit the claimant. The administrative law judge is persuaded that the claimant threw the product and admitted that he had done so to Mr. Stillwagon. The claimant is now denying such behavior in an attempt to secure unemployment insurance benefits. The claimant knew or should have known that destroying the product the employer was producing was conduct not in the employer's best interest. The claimant's action, that is destroying product by throwing it against a wall 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 March 26, 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 \$1,763.13.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs