

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTIAN ANDERSEN**  
Claimant

**APPEAL NO. 08A-UI-04617-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MDR MANAGEMENT INC**  
Employer

**OC: 04/06/08 R: 01  
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, MDR Management, filed an appeal from a decision dated May 8, 2008, reference 02. The decision allowed benefits to the claimant, Kristian Andersen. After due notice was issued a hearing was held by telephone conference call on May 29, 2008. The claimant participated on his own behalf. The employer participated by General Manager Dan Christian.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Kristian Andersen was employed by MDR Management from April 28, 2007 until April 7, 2008. He worked four hours during the day from 8:00 a.m. until noon doing grounds work, and from 10:00 p.m. until 3:00 a.m. as a security person.

General Manager Dan Christian counseled the claimant on March 31, 2008, because he was not performing his job duties as assigned or not being to work at all. He received two other verbal counselings on April 3 and 6, 2008, for the same problem.

On the night of April 6-7, 2008, the claimant was no-call/no-show for his 10:00 p.m. to 3:00 a.m. shift as the security guard. He was discharged the next day by Mr. Christian.

Kristian Andersen has received unemployment benefits since filing a claim with an effective date of April 6, 2008.

## REASONING AND CONCLUSIONS OF 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.

The claimant had been advised his job was in jeopardy as a result of his failure to appear for work or to perform his job duties when he did. The next shift after he received his final warning he was no-call/no-show to work. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and is conduct not in the best interests of the employer. The claimant is disqualified.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of May 8, 2008, reference 02, is reversed. Kristian Andersen is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$793.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs