

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAISE WHITE
Claimant

APPEAL NO. 13A-UI-09993-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWESTERN TRADING INC
Employer

OC: 07/21/13
Claimant: Respondent (2)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Midwestern Trading, Inc. (employer) appealed an unemployment insurance decision dated August 26, 2013, reference 01, which held that Chaise White (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 10, 2013. The claimant participated in the hearing. The employer participated through Owner Rick Stickle. Employer's Exhibits One and Two and Claimant's Exhibit A were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time laborer in the maintenance department from February 3, 2010 through July 19, 2013 when he was discharged for walking off the job on July 18, 2013. The employer's work rules require employees to work overtime when necessary and the claimant signed for receipt of the work rules. The claimant walked off the job on July 18, 2013 after Supervisor Joe Zalesky specifically told him to keep working. He had a long-standing pattern of argumentative and combative behavior.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on July 19, 2013 for insubordination when he walked off the job in violation of his supervisor's directive. Walking off the job constitutes a substantial disregard of the standards an employer has the right to expect. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

In the case herein, a waiver cannot be considered because both parties participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount of \$2,040.00.

DECISION:

The unemployment insurance decision dated August 26, 2013, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until 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 was overpaid benefits in the amount of \$2,040.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css