

**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**

**JAMES E ROBERTS
1195 E CO RD 2920
NIOTA IL 62358 2148**

**EAST WEST STAFFING LLC
C/o DUNN COPR RESOURCES INC
FOUR GREENTREE CTR #206
MARLTON NJ 08053**

**Appeal Number: 06A-UI-07859-DWT
OC: 06/18/06 R: 04
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:

East West Staffing LLC (employer) appealed a representative's July 26, 2006 decision (reference 03) that concluded James E. Roberts (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 21, 2006. The claimant participated in the hearing. Janet Smith, an on-site manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant registered to work for the employer. The claimant attended an orientation and received a copy of the employer's attendance policy. The attendance policy informs employees that if there are three days in which they do not properly notify the employer, they are unable to work in a rolling calendar year, the employer will discharge the employee for violating the employer's attendance policy.

On June 7, 2006, the claimant did not call or report to work as scheduled. On June 8, the employer told the claimant about the rumors the employer heard as to why the claimant was not at work. The claimant did not confirm or deny the rumors. On June 13, the claimant did not contact the employer until sometime after 9:00 a.m., even though the claimant's shift started at 6:00 a.m. The employer again talked to the claimant about his attendance, because the employer considered June 13 the second time the claimant did not call or report to work. On June 16, the claimant did not call or report to work as scheduled. When the claimant contacted the employer on June 16, about mid-morning, the employer confirmed that the claimant no longer had a job. If the employer had not terminated the claimant's assignment, the claimant had continued work at this assignment.

The claimant established a claim for unemployment insurance benefits during the week of June 18, 2006. The claimant filed weekly claims for the weeks ending June 24 through August 12. The claimant received his weekly benefits amount of \$186.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts establish the claimant knew his job was in jeopardy after June 13, when he did not work as scheduled or properly notify the employer he would not be at work on June 7 and 13. The facts indicate the claimant's absences on these days were not excused. When the claimant again failed to work as scheduled and did not properly notify the employer he was unable to work on June 16, he knew he would no longer have a job. The claimant presented no evidence to establish he took reasonable steps to notify the employer he was unable to work these days or that he was absent from work for reasonable or justifiable reasons. The

employer discharged the claimant for reasons constituting work-connected misconduct. As of June 18, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending June 24 through August 12, 2006. The claimant has been overpaid \$1,484.00 in unemployment insurance benefits for these weeks.

DECISION:

The representative's July 26, 2006 decision (reference 03) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of June 18, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending June 24 through August 12, 2006. The claimant has been overpaid and must repay a total of \$1,488.00 in benefits he received for these weeks.

dlw/kjw