

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RANDY MANTERNACH**

Claimant

**APPEAL NO: 06A-UI-10926-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASCADE DIE MOLD INC**

Employer

**OC: 10-08-06 R: 04  
Claimant: Respondent (2)**

Section 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 October 31, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 29, 2006. The claimant participated in the hearing with Attorney Steve Juergens. Joe Aitchison, Tooling Division Manager and Jolene Kramer, Human Resources Manager, participated in the hearing on behalf of the employer with Attorney Sean Scullen. Employer's Exhibit One was admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time tool maker and assistant supervisor for Cascade Die Mold from March 1, 1982 to October 10, 2006. The employer generally works a 50-hour work week with occasional overtime hours required. On October 3, 2006, the employer notified the claimant that due to an increase in the workload they would be working 55 hours per week for the next six to eight weeks. The claimant said he could not work more than 10 hours per day because his knees and legs bothered him. The employer told him he could work the extra five hours on Saturday or Sunday if necessary but the claimant said he would not work the extra hours because he did not need the overtime money and he wanted to spend more time with his family. The employer told him he had to work the extra hours and there would be no exceptions. The claimant left the office and the employer believed he was going to work the extra hours. On October 9, 2006, the employer realized the claimant had not worked any additional hours during the week or over the weekend and on October 10, 2006, the employer met with the claimant about the overtime hours. It told the claimant he had to work or find different employment. The claimant asked for time to think about it and at 1:00 p.m. he said it would not work out and the employer told him he would have to look for a different job. The claimant asked if he was being fired and the employer said yes and told him to get his tools and

leave the premises. The employer's policy states that "due to the nature of our business it may become necessary to change your hours and break periods from time to time. Your cooperation is both expected and appreciated. We will endeavor to give you as much advance notice as possible. (Employer's Exhibit One). The claimant had worked overtime and on weekends in the past without complaint but testified he was physically unable to work 55 hours per week because of his knees and legs. He did not have a doctor's note restricting his hours because of his knees. He did go to his doctor October 19, 2006, after the termination occurred, and the doctor indicated he may have arthritis but did not restrict the number of hours he could work.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

### **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 refused to work the required overtime hours even though he had been working the usual 50 hours per week at least the last four to six weeks prior to his termination. The extra five hours per week may have been an inconvenience for the claimant or have truly bothered his knees but the employer offered him the opportunity to work five hours per weekend to accommodate his concerns about the extra hours. Additionally, while the claimant testified he was physically unable to work the extra hours because of his knees, he did not provide the employer with any medical documentation and told the employer he did not need the overtime pay and wanted to spend more time with his family, not that he could not work weekends because of his knees. Although the claimant's knees and legs may have bothered him, it was his responsibility to provide medical documentation stating he could not work the extra hours for the next six to eight weeks and he did not do so. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). 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 October 31, 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 \$2,082.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs