

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VINCENT KUCERA**  
Claimant

**APPEAL NO: 09A-UI-18258-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OMEGA CABINETS LTD**  
Employer

**OC: 11/23/08**  
**Claimant: Respondent (2/R)**

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

**STATEMENT OF THE CASE:**

Omega Cabinets, Ltd. (employer) appealed an unemployment insurance decision dated December 2, 2009, reference 01, which held that Vincent Kucera (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 January 15, 2010. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Jodi Schafer, Human Resources Representative. Employer's Exhibits One through Three were admitted into evidence. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant 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 material handler from January 11, 1999 through November 11, 2009. He was discharged pursuant to the employer's disciplinary policy after he received three written warnings within a 12-month period. The claimant received a written warning on April 28, 2009 for multiple inventory discrepancies. He staged 500 board feet of Maple but did not issue it out which caused purchasing to rush the same quantity in from a supplier. The claimant staged and issued Cherry, he issued a straight mix instead of issuing a 60/40 mix between #1 and #2. And finally, he received three purchase orders from Buffalo Veneer but received them incorrectly.

The claimant received a final written warning on October 26, 2009 for additional inventory discrepancies. On October 20, 2009 the claimant was assigned to get discs for Department #430. The computer system reflected that there were 650 five inch discs in location 5118025. The claimant discovered there were 1,650 discs in that location. He retrieved all 1,640 discs

and delivered them to Department #430 but failed to notify anyone of the discrepancy. The claimant only issued the 650 discs that were reflected on the computer system. The employer received notification later that day that there were 1,000 discs not received into the system and after investigating, learned the claimant had known this but failed to tell anyone or rectify the situation.

Each written warning signed by the claimant included the disciplinary policy which notified him that he would be terminated if he received three disciplinary warnings within a 12-month period. The final incident, which resulted in a third written warning and prompted his termination, occurred on November 6, 2009 when the claimant's supervisor saw him transporting hazardous waste in an unsafe manner with a fork truck. All hazardous waste containers need to be secured on a pallet when moved and the claimant simply had the barrel of waste sitting on the tines of the fork truck without being secured on a pallet. If he had hit a pothole the waste could have spilled and would have cost thousands of dollars to clean it up.

The claimant filed a claim for unemployment insurance benefits effective November 23, 2009 and has received benefits after the separation from employment.

#### **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.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged per the employer's disciplinary policy after he received three written warnings within a 12-month period. Even though he knew his job was in jeopardy, he moved a container of hazardous waste in an unsafe manner. The claimant had worked there long enough to know the correct way to do things. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated December 2, 2009, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs