

**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**

**ALVIN HILLIARD  
2332 E PLEASANT ST  
DAVENPORT IA 52803-2326**

**G & K SERVICES COMPANY  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-05783-RT  
OC: 04-30-06 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, 4<sup>th</sup> 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 for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, G & K Services Company, filed a timely appeal from an unemployment insurance decision dated May 22, 2006, reference 01, allowing unemployment insurance benefits to the claimant, Alvin Hilliard. After due notice was issued, a telephone hearing was held on June 21, 2006, with the claimant participating. Wendy DePauw, Human Resources Representative, and Lauri Graham, Plant Manager, participated in the hearing for the employer. Scott Fury was available to testify for the employer but not called because his testimony would have been repetitive and unnecessary. Employer's Exhibits One and Two were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One and Two, the administrative law judge finds: The claimant was employed by the employer as a full time garment sorter from October 10, 2000 until he was discharged on May 3, 2006. The claimant was discharged for repeatedly failing to perform his job properly. Part of the claimant's job responsibilities require that he sort through garments including emptying the pockets of shirts, in particular white shirts, and then placing the garments or shirts into carts to be cleaned by the employer. The claimant repeatedly failed to remove pens and other markers from the pockets of the garments thus causing ink stains on the garment when they were cleaned or washed and damaging the garment accordingly. The claimant's last occurrence occurred on April 28, 2006 when he failed to remove pens or markers and caused ink stains on the garments damaging the garments. The claimant was off work until May 3, 2006 when he was informed that he was discharged. At that time the claimant was given the opportunity to go to the stock room and examine the garments but the claimant chose not to do so.

The claimant had received numerous and repeated warnings about this behavior as shown at Employer's Exhibit One. On May 19, 2004, the claimant received a verbal warning about identifying objects left in white garments. On July 15, 2004, the claimant received a written warning for failing to catch an ink pen in a white load and consequently the employer had to replace 61 garments. On October 10, 2005, the claimant was given an oral warning and informed that he needed to check only the white garments for items in the pockets. On February 16, 2006, the claimant received a verbal warning for damaging 27 items or garments. On March 22, 2006, the claimant received a written warning for allowing 45 white garments to be damaged with ink by not inspecting properly the white garments prior to being washed. This cost the employer \$720.00. On March 29, 2006, the claimant received a written warning for allowing 75 garments to be damaged with ink because he did not properly inspect the white garments prior to being washed. This cost the employer approximately \$1,200.00. This written warning was followed up by a conversation on March 30, 2006. On April 21, 2006, the claimant was given a written warning for allowing 13 white garments to be damaged by ink because he did not properly inspect the white garments and this cost the employer \$208.00. Finally, the claimant committed the same offense on April 28, 2006 damaging 95 white garments with ink because he did not properly inspect the white garments costing the employer \$1,520.00. The claimant was then discharged. Pursuant to his claim for unemployment insurance benefits filed effective April 30, 2006, the claimant has received unemployment insurance benefits in the amount of \$1,631.00 as follows: \$186.00 for benefit week ending May 6, 2006 (earnings \$175.00) and \$289.00 per week for five weeks from benefit week ending May 13, 2006 to benefit week ending June 10, 2006. Of that amount \$787.00 was offset against an overpayment from 2000 leaving an overpayment balance of zero.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is.

The parties agree, and the administrative law judge concludes, that the claimant was discharged on May 3, 2006. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The evidence establishes that the claimant was discharged for repeatedly failing to check white garments thoroughly for pens or other markers containing ink and thereby causing damage to the white shirts or garments when they were washed. At the outset, the administrative law judge concludes that the employer has not demonstrated by a preponderance of the evidence that the claimant's failures to check the white garments properly were willful or deliberate. However, the evidence establishes that the claimant received numerous verbal and written warnings as shown at Employer's Exhibit One, including three such written warnings in slightly more than one month before the claimant's discharge. The warnings were all for the same behavior; neglecting or failing to properly inspect the pockets of white garments to remove any pens or markers therefore causing the white garments to be damaged with ink and costing the employer money. Because of all of the warnings and the claimant's repeated failures to check the garments, the administrative law judge is constrained to conclude that the claimant's acts were carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. What occurred here was far more than mere inefficiency, unsatisfactory conduct, a failure in good performance as a result of inability or incapacity or ordinary negligence in isolated instances. The claimant's failures were repeated. The claimant testified that he never saw the damaged garments but the evidence establishes that the claimant was offered the opportunity to see the garments upon his discharge but refused and further never specifically requested to see the damaged garments for any of the warnings.

In summary, and for all of the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, he requalifies for such benefits.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,631.00 since separating from the employer herein on or about May 3, 2006 and filing for such benefits effective April 30, 2006. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such

benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 22, 2006, reference 01, is reversed. The claimant, Alvin Hilliard, is not entitled to receive unemployment insurance benefits, until, or unless, he requalifies for such benefits, because he was discharged for disqualifying misconduct. The claimant has been overpaid unemployment insurance benefits in the amount of \$1,631.00.

kkf/pjs