IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

PAUL R SCHELLY
Claimant

ALTORFER INC
Employer

APPEAL NO. 07O-UI-00447-CT

ADMINISTRATIVE LAW JUDGE AMENDED DECISION

OC: 10/01/06 R: 04
Claimant: Respondent (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Altorfer, Inc. filed an appeal from a representative's decision dated October 18, 2006, reference 01, which held that no disqualification would be imposed regarding Paul Schelly's separation from employment. After due notice was issued, a hearing was held by telephone on November 1, 2006. The November 2, 2006 decision of the administrative law judge affirmed the allowance of benefits. The employer filed a further appeal with the Employment Appeal Board which, on January 9, 2007 remanded the matter for a new hearing because the employer had been denied the opportunity to participate in the prior hearing.

Pursuant to the remand, due notice was issued scheduling the matter for a telephone hearing on January 30, 2007. Mr. Schelly participated personally. The employer participated by Eric Driessen, Human Resources Manager; Earl Harvill, Store Manager; Mark Hanson, VP for Sales; Larry Sunday, Central Region Sales Manager; and Scott Altorfer, CCE Sales Manager. Exhibits One through Six were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Schelly was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Schelly was employed by Altorfer, Inc. from July 18, 2005 until September 18, 2006 as a full-time sales representative. He was discharged for being dishonest with the employer. Mr. Schelly is a golfer and the employer had no objection to him playing golf on work time if necessary to entertain a customer or potential customer. The employer notified all staff in February of 2006 that personal golfing on work time was not acceptable. Mr. Schelly was told during his performance review on May 31, 2006, that attending golf outings during the workweek was discouraged.

On Monday, September 11, 2006, Mr. Schelly played in a golf outing sponsored by Blue Port Junction, a local restaurant. He was not golfing with customers on this occasion but two of his

coworkers did play with him. The two coworkers had obtained permission to take vacation time but Mr. Schelly had not requested vacation time for the day. He played in the tournament from approximately 8:00 a.m. until 2:00 p.m. On September 12, Earl Harvill approached him and told him his presence at a golf outing the previous Saturday was missed. Mr. Schelly told him that he had not felt well all weekend. When Mr. Harvill asked how he had done in the Blue Port Junction outing, Mr. Schelly indicated that he had been unable to play because he was ill. He indicated he was home by 3:00 p.m. and went straight to sleep. Later that day, Mr. Harvill had lunch at Blue Port Junction and questioned employees there as to whether Mr. Schelly had played in their outing on September 11. It was confirmed that he had played.

On the afternoon of September 12, Larry Sunday had a telephone conversation with Mr. Schelly. Mr. Schelly mentioned that he had been sick all weekend and was home by approximately 3:30 p.m. on September 11. He did not mention that he had played golf on Monday. On September 14, Mr. Sunday went to Blue Port Junction to verify for himself that Mr. Schelly had played in their outing on September 11. His participation in the golf outing was again confirmed.

On Monday, September 18, Mr. Harvill asked Mr. Schelly how he was feeling and asked about his weekend. Mr. Schelly indicated he had gone to Peoria to play golf with friends. Mr. Harvill indicated that was good since he did not get a chance to play in the golf outing the prior week due to illness. Mr. Schelly did not give a response to the statement. Mr. Harvill reported the conversation to Mr. Sunday who requested that he ask Mr. Schelly directly if he had lied about playing golf on September 11. When asked, Mr. Schelly admitted that he had. He also indicated that he felt bad about having lied to Mr. Harvill. After he confirmed that he had lied to the employer, Mr. Schelly was discharged on September 18, 2006.

Mr. Schelly filed a claim for job insurance benefits effective October 1, 2006. He has received a total of $1,327.00 in benefits since filing his claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Schelly was discharged because he was dishonest with the employer regarding whether he played in a golf tournament on September 11. He had several opportunities to tell the truth but chose not to. He initially lied to Mr. Harvill on September 12 when he said he had not played. On September 12, he led Mr. Sunday to believe that he had worked on September 11 but stopped working around 3:30 p.m. because he was ill. He made no mention of having played golf that day. During the interim between September 12 and September 18, he did nothing to correct his earlier untrue statement. Mr. Schelly had the opportunity to acknowledge his untruth when initially questioned by Mr. Harvill on September 18. He did not acknowledge his untrue statement until asked directly whether he had lied.

Mr. Schelly did not request vacation time to play golf on September 11. It was not an outing with the employer's customers or potential customers. Mr. Schelly was playing to defend his title from the prior year. Since he did not take vacation time, he was paid regular wages for September 11. Because the golf outing was not work-related, Mr. Schelly received pay for playing golf with his friends. This was also an act of dishonesty, receiving pay while engaging in personal activities.

Mr. Schelly contended that his actions were not misconduct because the person he lied to was not his supervisor. Although Mr. Harvill may not have been his direct supervisor, he was a member of management and, as such, had the right to expect honesty from all Altorfer, Inc. employees. Moreover, Mr. Schelly indicated during the hearing that he knew Mr. Harvill was questioning him on Mr. Sunday's behalf.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has satisfied its burden of proving substantial misconduct. Dishonesty towards one's employer constitutes a substantial disregard of the standards an employer has the right to expect. Accordingly, benefits are denied. Mr. Schelly has received benefits since filing his claim. The initial determination by a Workforce Development representative allowed benefits and the allowance was affirmed by an administrative law judge on November 2, 2006. Where an administrative law judge affirms a decision of the representative allowing benefits and the matter is later reversed, no overpayment results. Iowa Code section 96.6(2). The rule of "double-affirmance" relieves the claimant of an overpayment and relieves an employer of benefit charges. Therefore, Mr. Schelly will not be assessed an overpayment and Altorfer, Inc. will not be charged for benefits paid to him.

DECISION:

The representative's decision dated October 18, 2006, reference 01, is hereby reversed. Mr. Schelly was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman
Administrative Law Judge

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Decision Dated and Mailed

cfc/css