

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DENNIS L BRYANT
Claimant

APPEAL NO. 14A-UI-09656-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURKE MARKETING CORPORATION
Employer

OC: 08/24/14
Claimant: Respondent (2)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 16, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 7, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Terry Ubben participated in the hearing on behalf of the employer with a witness, Kelly Hill. Exhibits One and Two were admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as a sanitation lead from April 5, 2004, to August 28, 2014. He was informed and understood that under the employer's work rules, failing to complete a required task and then documenting that the task had been completed was considered falsification of records, which would result in termination.

One of the claimant's job duties was to perform a pre-op inspection of a piece of equipment called an Aerofreeze unit. After completing the inspection, he was required to check and record the time on an pre-op sheet. This has to be done before the equipment could be put into production.

On August 6 and 7, the cleaning got behind on the Aerofreeze machine. A proper inspection of the Aerofreeze machine cannot be done until the cleaning process is finished. On August 6, the cleaning process was not done until about 7:47 a.m. The claimant recorded on the pre-op sheet that he had done the inspection at 7:30 a.m. The operations manager, Kelley Hill, was in the area of the Aerofreeze machine that morning and never saw the claimant performing an

inspection. He later looked at the pre-op sheet and found that the claimant had recorded he did the inspection at 7:30 a.m. and had clocked out at 7:41 a.m.

On August 7, the cleaning process was not done until about 7:30 a.m. The claimant recorded on the pre-op sheet that he had done the inspection at 7:10 a.m. The claimant clocked out at 7:40 a.m. on August 7.

On August 11, the claimant was questioned about failing to conduct the pre-op inspections and recording they were done as discussed above. He contended he had done the inspections. Kelly Hill was on vacation from August 11 through 15 so the employer delayed in completing its investigation until he returned to work during the week of August 18. After completing its investigation and determining that the claimant had failed to properly perform the pre-op inspections but had recorded that he had, the employer discharged the claimant on August 28, 2014.

Terry Ubben, human resources manager, participated in the fact finding interview conducted before the decision granting benefits was issued.

The claimant filed for and received a total of \$416 in unemployment insurance benefits for the week ending October 11, 2014.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. Hill's testimony that it was not possible to do a proper inspection until after the cleaning process was completed was very convincing. He was in the area at the time the claimant said he had done the inspection and did not see the claimant inspect the machine.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law generally requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. But a claimant is not required to repay an overpayment when an initial decision to award benefits on an employment-separation issue is reversed on appeal if two conditions are

met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$416 in benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer's account will not be charged for benefits.

DECISION:

The unemployment insurance decision dated September 16, 2014, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$416 in benefits, which he is required to repay.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css