

**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**

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**Appeal Number: 05A-UI-03053-SWT
OC: 05/02/04 R: 12
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, 4th 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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 26, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 12, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Hugh Cain, attorney at law, participated in the hearing on behalf of the employer with witnesses, Starr Lehl and Gunther Koob. Exhibits One through Four were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as city administrator from July 6, 2004, to December 8, 2004. The claimant was informed and understood that under the employer's work rules, consuming and being under the influence of alcohol during work hours was prohibited.

On November 24, 2004, the claimant deliberately consumed and was under the influence of alcohol during work hours. The mayor, Starr Lehl, discovered the claimant locked in his office during working hours. Earlier the same week, the claimant had missed an important meeting and Lehl had discovered his office door locked. This time, she peeked through the office window and observed the claimant with his shoes and glasses off sleeping behind his desk. When she and a council member, Gunther Koob, entered the room, they detected the odor of an alcoholic beverage in the room and on the claimant's breath as he spoke with them. Lehl had previously warned the claimant after employees had complained that the claimant smelled of alcohol, which the claimant falsely attributed to the mouthwash he was using.

The claimant was placed on administrative leave on November 29, 2004, and on December 8, 2004, the employer asked for the claimant's resignation for violating the employer's alcohol policy. The claimant submitted his resignation but would have been discharged if his resignation had not been submitted.

The claimant filed an additional claim for unemployment insurance benefits with an effective date of February 20, 2005. He filed for and received a total of \$2,177.00 in unemployment insurance benefits for the weeks between February 20 and April 9, 2005.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. A claimant who resigns when given the choice of resigning or being discharged has not voluntarily quit employment and is treated as having been discharged. 871 IAC 24.26(21).

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's violation of a known work rule prohibiting consuming alcohol at work 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. In Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979), the Iowa Supreme Court ruled that Huntoon's testimony about his alcoholism was not enough to establish his conduct was involuntarily or the result of incapacity. Likewise, the claimant testified to a history of alcohol problems, but there is no evidence to establish that his consumption of alcohol on November 22 and 24, 2004, was involuntarily or beyond his ability to control. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue in this case is whether the claimant was overpaid unemployment insurance 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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits effective February 20, 2005, and was overpaid \$2,177.00 in unemployment insurance benefits for the weeks between February 20 and April 9, 2005.

DECISION:

The unemployment insurance decision dated May 26, 2005, 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 \$2,177.00 in unemployment insurance benefits, which must be repaid.

saw/pjs