

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIJAH S BULTEN
Claimant

APPEAL NO. 13A-UI-06946-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELITE STAFFING GLOBAL INC
Employer

OC: 01/13/13
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Elite Staffing, filed an appeal from a decision dated June 5, 2013, reference 01. The decision allowed benefits to the claimant, Elijah. After due notice was issued a hearing was held by telephone conference call on July 17, 2013. The claimant participated on his own behalf. The employer participated by Resource Manager Regina Rush and was represented by Joseph McDonnell.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Elijah Bulten was employed by Elite Staffing from March 26, 2013 until May 6, 2013. He was assigned on a temp-to-hire basis at United States Gypsum (USG).

On Friday, April 26, 2013, the claimant left his work area during the lunch hour, taking a company vehicle without permission. He went to the USG office to get a phone number Elite Staffing's Resources Manager Regina Rush to question her about why he had not gotten his pay by the direct deposit into his bank.

Ms. Rush said there had been a problem with the payroll and she would have the money wired to his account. He went back to work and then approximately 90 minutes later he announced he was leaving and did so without direct permission from his supervisor.

During the weekend he was scheduled to work but was a no-call/no-show and did not arrive at work until five hours after the start time on Monday, April 29, 2013. His supervisor sent him home because he had arrived so late it was unproductive to put him to work at that time. The supervisor told him it was unacceptable to take the company truck without permission and to leave without permission.

Mr. Bulten had decided he should be able to leave, not appear for the weekend shift and arrive at work late on Monday because Elite Staffing "could not be trusted." This was the only occasion during his assignment when his pay had been late. The late pay problem had happened to other employees at that same pay date.

The USG plant manager J.K. Tristan did not return to the quarry until May 6, 2013, at which time the acting manager discussed with him Mr. Bulten's conduct the week before. The decision was made to remove him from the assignment and Mr. Tristan notified Ms. Rush. She contacted the claimant by phone to notify him he was not to return to USG.

Elijah Bulten has received unemployment benefits since filing an additional claim with an effective date of May 5, 2013.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 claimant was discharged from his assignment for misconduct. He took a company vehicle for his personal use without permission and did not have authorization from the supervisor to leave work later that day. He did not appear for the entire shift he was to work over the weekend and was five hours late on Monday.

This was because he was upset with Elite Staffing and the payroll mix up. But this is not the responsibility of the client company and the employer did rectify the situation as soon as possible. Mr. Bulten felt he could "not trust" Elite Staffing because of this one incident and decided to punish USG instead of working through the problem with Elite Staffing.

The claimant showed a substantial disregard for the client's policies, equipment and best interests. Elite Staffing has the obligation to provide reliable, professional and courteous staff to its clients. Mr. Bulten's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of June 5, 2013, reference 01, is reversed. Elijah Bulten is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs