

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAFAEL S CHAVEZ**  
Claimant

**APPEAL NO. 11A-UI-11196-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE HON COMPANY**  
Employer

**OC: 12/26/10**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Employer filed a timely appeal from a representative's decision dated August 16, 2011, reference 02, which allowed benefits. After due notice, a telephone hearing was held on September 19, 2011. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Ms. Sandy Linsin, Hearing Representative, and witnesses: Ms. Jennifer Ruff and Mr. Todd Stark.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits and whether the claimant has been overpaid job insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Rafael Chavez was employed by The Hon Company from January 23, 2006 until July 21, 2011 when he was discharged from employment. Mr. Chavez worked as a full-time production worker and was paid by the hour. His immediate supervisor was Todd Stark.

The claimant was discharged when he failed to follow a specific job directive on the night of July 15, 2011. On that night the claimant and other production workers had been specifically instructed to remain on the job site until work was completed that evening. After the supervisor left, Mr. Chavez told other employees that he had been given specific permission to leave early and did so. Mr. Chavez left the work premises prior to the end of the work shift without any specific permission from his immediate supervisor. The claimant was aware that he needed to obtain specific permission from management personnel before leaving. Although four management individuals were available at the work site, Mr. Chavez did not obtain permission from any management personnel before leaving without authorization.

Because the claimant had been specifically warned in January 2011 about insubordinate conduct and failing to follow specific work directives and had been warned that future violations would result in his termination, a decision was made to terminate Mr. Chavez from his employment. At the time of discharge Mr. Chavez did not indicate any extenuating circumstances that had caused him to violate the work directives that had been given to him or to leave work without authorization.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code § 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 employer has the burden of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The evidence in the record establishes the claimant was discharged after he failed to follow a reasonable work-related directive that was given to him on July 15, 2011. The claimant left work without completing necessary tasks in violation of the work directive given to him by his immediate supervisor. The claimant provided false information to other workers indicating that he had been given specific permission to leave early that night when he had not received permission. The claimant did not receive authorization to leave work prior to the end of the work shift. Although four other management individuals were available at the work site, the claimant did not request permission to leave early or inform supervisory personnel that he was leaving work prior to the end of the shift. Because the claimant had been specifically warned about similar conduct in the past, he was discharged from employment.

There being no evidence to the contrary, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant's discharge took place because of the claimant's willful violation of a reasonable and known work directive. Unemployment insurance benefits are withheld.

Iowa Code § 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.

**DECISION:**

The representative's decision dated August 16, 2011, reference 02, is reversed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets all other eligibility requirements. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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