

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SAMUEL CANFIELD**  
Claimant

**APPEAL NO: 17A-UI-02419-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CENTRAL TRAILER SERVICE**  
Employer

**OC: 02/05/17**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 27, 2017, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 28, 2017. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Jerry Anderson, Service Manager and Cindy Olson, Office Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time mechanic for Central Trailer Service from December 8, 2015 to January 11, 2017. He was discharged for poor workmanship and excessive unexcused absenteeism.

The claimant's workmanship declined after he started working for the employer. At first he met the employer's expectations, but as time went on his workmanship became shoddy and poor. At least 5 percent of the work the claimant did had to be redone, which is an unacceptably high number. On May 4, 2016, the employer issued the claimant a verbal warning in writing, but the claimant refused to sign it. The warning stated that failure to show improvement would result in termination. The employer issued the claimant several other warnings about his workmanship and attendance, all of which he refused to sign.

The claimant was repeatedly late and absent. He was scheduled to work 40 hours per week. During the pay period ending August 5, 2016, he worked zero hours; during the pay period ending August 12, 2016, he worked 27.9 hours; during the pay period ending August 19, 2016, he worked 29.8 hours; during the pay period ending August 26, 2016, he worked 35 hours;

during the pay period ending September 2, 2016, he worked 38.2 hours; during the pay period ending September 9, 2016, he worked 13 hours; during the pay period ending September 16, 2016, he worked 31.3 hours; during the pay period ending September 23, 2016, he worked 40.9 hours; during the pay period ending September 30, 2016, he worked 32 hours; during the pay period ending October 7, 2016, he worked 37.1 hours; during the pay period ending October 14, 2016, he worked 33.5 hours; during the pay period ending October 21, 2016, he worked 36.7 hours; during the pay period ending October 28, 2016, he worked 31.9 hours; and during the pay period ending November 4, 2016, he worked 36.8 hours. The claimant only texted the employer about 50 percent of the time he was going to be tardy. He usually notified the employer when he was going to be absent.

The claimant sustained a non-work related injury and his last day worked was November 4, 2016. The employer planned to terminate him that day but let him stay on so he would have insurance given his injury and notified him his employment was terminated January 11, 2017, when he was released to return to work.

The claimant has claimed and received unemployment insurance benefits in the amount of \$975.00 for the three weeks ending February 25, 2017.

The employer did not participate in the fact-finding interview. The fact-finder called Mr. Anderson and Ms. Olson at 515-957-0300 on February 24, 2017, at 10:20 a.m. but did not receive an answer. The fact-finder left a voice mail for the employer asking for a callback but the employer did not respond to the message.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant's workmanship declined throughout his tenure with the employer even though he had the ability and was perfectly capable of performing the work to the employer's satisfaction. More than 5 percent of his work had to be redone when the customer returned with their vehicle for further repairs or to correct the claimant's errors. The claimant's attendance record was also poor throughout his employment as evidenced by the fact he only worked a 40 hour week one of 14 weeks between August 5 and November 4, 2016.

The employer warned the claimant about his work performance and attendance on several occasions and told him his job was in jeopardy as recently as October 21 or October 28, 2016, but the claimant refused to sign any warnings, which in itself can be grounds for termination. Instead, however, the employer continued to try to work with him to no avail.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the

information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law 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. However, a claimant will not have 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 section 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 benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and employer failed to participate in the finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. In this case, the claimant has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer did not participate in the fact-finding interview. Consequently, the claimant's overpayment of benefits must be waived and the \$975.00 in benefits the claimant has received to date for the three weeks ending February 25, 2017, shall be charged to the employer's account.

**DECISION:**

The February 27, 2017, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. However, the employer did not participate in the fact-finding interview. Therefore, the claimant's overpayment of benefits, in the amount of \$975.00 for the three weeks ending February 25, 2017, is waived as to the claimant and shall be charged to the employer's account.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/rvs