

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL B THOMAS**  
Claimant

**APPEAL NO. 07A-UI-00285-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CUSTOM-PAK INC**  
Employer

**OC: 12/10/06 R: 04  
Claimant: Respondent (2)**

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 January 2, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 24, 2007. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Andrea Lawrence participated in the hearing on behalf of the employer with a witness, Lonnie Andrian. Exhibit One was admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a machine operator from March 13, 2006, to November 9, 2006. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. The claimant received warning regarding his excessive unexcused absenteeism on May 22 and August 18. In the warning on August 18, he was informed that his job was in jeopardy and he would be discharged if he missed any more time before November 18, 2006.

On November 9, 2006, the claimant called in and notified a supervisor that he would not be able to work his evening shift from 3:00 to 11:20 p.m. because he had to report to the county jail that evening at 7:00 p.m.. The supervisor told him that it would violate the terms of the warning on August 18, if he missed work.

The claimant reported to work at 3:00 p.m. and informed the group leader that he would have to leave before the end of his shift to report to the jail at 7:00 p.m. He was then informed that his employment was terminated for excessive unexcused absenteeism.

The claimant filed for and received a total of \$1,488.00 in unemployment insurance benefits for the weeks between December 10, 2006, and January 20, 2007.

**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.

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's excessive unexcused absenteeism 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 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 and was overpaid \$1,488.00 in unemployment insurance benefits for the weeks between December 10, 2006, and January 20, 2007.

**DECISION:**

The unemployment insurance decision dated January 2, 2007, 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 \$1,488.00 in unemployment insurance benefits, which must be repaid.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/pjs