

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRETT S LISK**

Claimant

**APPEAL NO. 07A-UI-07294-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ANDERSON TOOLING INC**

Employer

**OC: 07/01/07 R: 03  
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, Anderson Tooling, filed an appeal from a decision dated July 20, 2007, reference 01. The decision allowed benefits to the claimant, Brett Lisk. After due notice was issued a hearing was held by telephone conference call on August 14, 2007. The claimant participated on his own behalf. The employer participated by General Manager Jeff Anderson.

**ISSUE:**

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

**FINDINGS OF FACT:**

Brett Lisk was employed by Anderson Tooling from March 27 until June 27, 2007, as a full-time commission-only salesman. He never made any sales during his tenure, but he had a “draw account” of \$8,000.00 which he consumed entirely prior to the end of his employment. He then began to use the company credit card for some personal expenses. In addition, because he had to use his own car when a company car had initially been promised, he was given authorization to have some of the employer’s production crew do an oil change on his car, but he told them General Manager Jeff Anderson had authorized more extensive work, which he had not.

The claimant had revealed confidential information to a customer regarding the manufacturer, location and cost of a piece of equipment Anderson Tooling was selling to it, thus revealing the profit made by the employer. It was also discovered Mr. Lisk had lied about the nature of his separation from a previous employer, he said he had quit but when Anderson Tooling inquired, the previous employer said the claimant had been fired.

Mr. Lisk was talked to by Jeff Anderson about his conduct and let it be known that President Dean Anderson was not likely going to tolerate any more inappropriate and questionable conduct. But on June 27, 2007, Dean Anderson, production workers on the floor and at least one customer heard the claimant call in to a radio show in KRNA radio out of Iowa City, Iowa,

called "Two Dorks In The Morning." During the claimant's conversation with the radio personnel he identified himself and the company for which he worked. He then asserted he had made a sale of \$385,000.00 and would be "taking two weeks of vacation and smoking a big cigar." He made other comments as well and this occurred while he was out of town on company business.

Customer and employees complained about the claimant's comments on the radio, and one customer asked Dean Anderson why he would have a salesperson working for his company who would make such public comments which "hurt the company," The president notified Jeff Anderson to discharge the claimant which he did later that day. Before returning his company computer Mr. Lisk wiped the hard drive clean of all sales contact information he had accumulated during his employment even though this was work product and rightfully the property of Anderson Tooling.

Brett Lisk has received unemployment benefits since filing a claim with an effective date of July 1, 2007.

#### **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 had denied any and all wrongdoing of which he was accused. But closer examination has revealed several inconsistencies in his testimony which negatively impacts his

credibility. For instance, he maintained he was guaranteed \$35,000.00 a year in salary plus commission but also acknowledged this was only a projected income he could provide to his attorney to help determine child support, and also acknowledged that he promised to pay back the money he had taken as a draw from future sales. He also misrepresented the nature of his separation from his previous employer. The administrative law judge therefore determines the claimant's credibility to be questionable.

Mr. Lisk made himself very free with the employer's resources, the company credit card, exaggerating the amount of work the production workers were to do on his car, and did not hold the business information of the employer in confidence with customers. The final precipitating event was inappropriate and unprofessional comments on a radio program. The very name of the show, "Two Dorks in the Morning" would, this judge believes, impugn the reputation and credibility of any person participating in the show, and to publicly name his employer and make exaggerated statements about his own sales, would extend that poor opinion to the employer as well. This is corroborated by the fact Anderson Tooling customers called in to complain to the president of the company.

The record establishes the claimant was guilty of job-related misconduct sufficient to warrant a denial of unemployment 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.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of July 20, 2007, reference 01, is reversed. Brett Lisk is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$2,033.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs