

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LANDEN SOUNNARATH
Claimant

APPEAL NO: 14A-UI-00453-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERIDIAN MANUFACTURING
Employer

OC: 12/15/13
Claimant: Respondent (2)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Meridian Manufacturing (employer) appealed a representative's January 8, 2014 decision (reference 01) that concluded Landen Sounnarath (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on February 5, 2014. A review of the Appeals Section's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Marla Smith appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for work-connected misconduct? Was the claimant overpaid unemployment insurance benefits, and if so, is that overpayment subject to recovery based upon whether the employer participated in the fact-finding interview?

OUTCOME:

Reversed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on May 9, 2011. He worked full time as a welder at the employer's agricultural storage and farm equipment manufacturing facility. His last day of work was December 3, 2013. The employer discharged him on that date. The stated reason for the discharge was insubordination through refusal to perform a task as instructed.

On December 3 the claimant's supervisor had instructed the claimant several times to sand the parts he had welded when he was finished with the weld to make the joint smooth. The claimant refused, even when his supervisor warned him that he would be sent home if he

continued to refuse. When the claimant continued to refuse, he was sent home. Later that afternoon the human resources manager, Smith, spoke to the claimant by phone. He acknowledged that he had refused to sand the parts as he had been instructed; the only explanation he offered was that he “just didn’t want to.” As a result, the employer discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective December 15, 2013. A fact-finding interview was held with a Claims representative on January 7, 2014. The employer, through Lane Muckey, Plant Manager, participated directly in the fact-finding interview. The claimant has received unemployment insurance benefits after the separation in the amount of \$2,527.00.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. IDJS*, 367 N.W.2d 300 (Iowa App. 1985). The employer's instruction was not unreasonable, and the claimant has not demonstrated that he had any good faith reason or good cause for not complying with the instruction. *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768 (Iowa App. 1982). The claimant's refusal to perform the task as instructed shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

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 § 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 employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's January 8, 2014 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. As of November 24, 2013, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid \$2,527.00, which is subject to recovery. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css