

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOEL E LEWIS
Claimant

APPEAL NO. 07A-UI-01496-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN GAMES INC
Employer

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

Section 96.5-2a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

American Games, Inc. filed a timely appeal from an unemployment insurance decision dated February 2, 2007, reference 01, that allowed benefits to Joel E. Lewis. After due notice was issued, a telephone hearing was held March 13, 2007 with Mr. Lewis participating. Human Resources Manager Kari Hockemeier testified for the employer which was represented by Ted Arndt of Johnson & Associates.

ISSUES

Was the claimant discharged for misconduct in connection with his employment? Has the claimant been overpaid?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Joel E. Lewis was employed by American Games, Inc., from October 19, 2000 until he was suspended on December 11 and discharged December 13, 2006. He worked as a press helper.

Mr. Lewis worked nights, four days a week. On the night of December 7, 2006, Mr. Lewis argued with a coworker. During the course of the argument Mr. Lewis and the coworker threatened physical harm to one another. Mr. Lewis then retreated from the premises to have a cigarette. He returned, however. Lead worker Dan McGlone told Mr. Lewis to leave. Mr. Lewis did not do so immediately, but first gathered some personal belongings before leaving. The argument with the coworker continued during this time.

Mr. Lewis was suspended on December 11 pending investigation. He was discharged on December 13. Mr. Lewis has received unemployment insurance benefits since filing a claim effective January 7, 2007.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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 evidence establishes that Mr. Lewis engaged in an argument, including verbal threats, with a coworker. It also establishes insubordination in that Mr. Lewis did not leave the premises immediately when told to do so by the lead worker. This evidence is sufficient to establish misconduct. Benefits are withheld.

Mr. Lewis has received unemployment insurance benefits to which he is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

DECISION:

The unemployment insurance decision dated February 2, 2007, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured

work equal to ten times his weekly benefit amount, provided he is otherwise eligible. He has been overpaid by \$1,810.00.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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