

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONNEY A PIESTER
Claimant

APPEAL NO. 08A-UI-02813-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SALEM MANAGEMENT INC
Employer

**OC: 02/10/08 R: 01
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer, Salem Management, filed an appeal from a decision dated March 13, 2008, reference 01. The decision allowed benefits to the claimant, Ronney Piester. After due notice was issued a hearing was held by telephone conference call on April 7, 2008. The claimant participated on his own behalf. The employer participated by Office Manager Cyd Hall and Branch Manager Niki Heck. Exhibits One and Two were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Ronney Piester was employed by Salem Management from June 15, 2006 until February 11, 2008, as a full-time employee service representative. On December 31, 2007, he received a written warning for failing to keep the employee files up to date and having the necessary documentation in them. The I-9 forms were mentioned specifically. These are required by the federal government and employees are to fill out the top portion personally to verify eligibility to work in the United States.

On Saturday, February 9, 2007, Branch Manager Niki Heck was looking through the papers the claimant had left on his desk after work the day before. She left them in a pile with a note for him to talk to her about them. Monday, February 11, 2008, the claimant did go to Ms. Heck but she was busy at the moment and he took it upon himself to start processing some of the paperwork. One was an I-9 form for an employee which did not have the social security number noted on it. He filled it in himself, which is contrary to the instructions. The paper had been on his desk for at least a week and he had not yet contacted the employee to make arrangements for her to complete it.

Ms. Heck did ask him what he done about that document and he admitted he had filled out the social security number himself rather than have the employee report to the office. This is not in

accordance with the instructions and exposed the employer to penalties from the federal government. He acknowledged he had known he was not supposed to fill out the information himself and offered to take a whole new form to the employee at her job site and have her fill it out completely herself. The employer declined and General Manager Stacy Volk discharged him.

Ronney Piester has received unemployment benefits since filing a claim with an effective date of February 10, 2008.

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 was aware of the proper procedure to be used in filling out the I-9 forms, he had received training and had over a year's experience. His decision to fill in the employee's information himself in order to process it before talking with Ms. Heck does not appear an attempt to expedite the paperwork but to make up for the fact it had been sitting on his desk for a week without any action being taken on it. He violated federal law and exposed the employer to penalties when he falsified the document by filling out information which was only to be provided by the employee. This, and his initial failure to process the document in a timely manner to begin with is conduct not in the best interests of the employer and the claimant is disqualified.

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 March 13, 2008, reference 01, is reversed. Ronney Piester 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 \$1,080.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs