

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFREY D ROBERTS**  
Claimant

**APPEAL NO. 11A-UI-07516-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ARMSTRONG MACHINE COMPANY INC**  
Employer

**OC: 04/10/11  
Claimant: Respondent (2-R)**

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

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated May 31, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 6, 2011. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Cliff Porter participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

**ISSUES:**

Was the claimant discharged for work-connected misconduct?  
Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked for the employer as a foreman from March 15, 2010, to April 7, 2011. The owner, Cliff Porter, warned the claimant about his excessive absences and tardiness. The claimant had four unexcused absences, took 13 days off for personal reasons, and was late 13 days.

After taking April 8 off for a medical appointment, the claimant had agreed to work starting at 8:00 a.m. on April 9. He failed to report to work as scheduled and failed to notify the employer that he was not going to work on April 9. Later that morning, Porter discovered the claimant was working on a project for someone else tearing down a school building.

When the claimant reported to work on April 11, 2011, he was discharged for excessive unexcused absenteeism.

The claimant filed for and received a total of \$1,999.00 in unemployment insurance benefits for the weeks between April 10 to June 4, 2011.

The claimant failed to provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. After the hearing had concluded, he called the Appeals

Bureau at 11:08 a.m. and admitted he had not followed the instructions on the hearing notice that required him to call in and provide his telephone number and was waiting for a call from someone with the Appeal Bureau. The claimant would have received a hearing notice and a letter regarding potential exhibit, both of which state that he would not be called unless he called in and provided his phone number. The claimant admitted he received the letter but could not recall getting the hearing notice. He admitted he could have received it and it was lost.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue is whether the claimant has shown good cause for reopening the hearing.

The unemployment insurance rule provide that the judge should proceed with the hearing if a party has failed to respond to a notice of telephone hearing by providing the appeals bureau with the party's telephone number by the scheduled time of the hearing. The rules state that if a party responds to the notice of hearing after the record has been closed and the other party which has participated is no longer on the telephone line, the judge shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the judge may reopen the record and cause further notice of hearing to be issued to all parties of record. Finally, the rules state that failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record. 871 IAC 26.14(7).

The request to reopen the record is denied because the claimant failed to participate by reading and following the instructions on the hearing notice.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides: Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer. The evidence establishes the claimant had a history of excessive attendance problems and the final incident involved an unexcused absence without any notice to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the

overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated May 31, 2011, 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 matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs