

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

CHARLES E JULION  
1100 OLESON  
WATERLOO IA 50702

PER MAR SECURITY & RESEARCH CORP  
c/o TALX EMPLOYER SVCS  
PO BOX 1160  
COLUMBUS OH 43216 1160

**NUNC PRO TUNC**  
**Appeal Number: 06A-UI-01786-DWT**  
**OC: 01/01/06 R: 03**  
**Claimant: Respondent (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Per Mar Security & Research Corporation (employer) appealed a representative's February 3, 2006 decision (reference 02) that concluded Charles E. Julion (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 13, 2006. The claimant responded to the hearing notice, but was not available for the hearing. John Kopnick, the manager of the Waterloo office, appeared on the employer's behalf.

This Amended Decision is issued because the administrative law judge neglected to check on any previous benefit years that may be affected by the decision in this case. The claimant had

a previously established benefit year that began on January 2, 2005. Since the claimant filed claims for the weeks ending September 10 through November 12, 2005, the overpayment is larger than previously indicated.

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:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

When the claimant applied for a job with the employer he reported he had never been convicted of any criminal offense, felony or misdemeanor. Based on the claimant's employment application, the employer hired the claimant to work as an on-call security officer. After hiring the claimant, the employer had a background check completed on the claimant.

In early September 2005, the corporate office received the claimant's completed background check report. The report indicated the claimant had been convicted of two misdemeanors in 1976. A corporate employee informed Kopnick he had to discharge the claimant because the claimant materially misrepresented himself when he completed the employment application. The employer probably would not have hired the claimant if he had accurately reported these misdemeanors.

Kopnick talked to the claimant about the information he supplied on his employment application. Kopnick understood the claimant remembered he had these convictions but did not believe it was necessary to inform the employer about the convictions because they happened about 30 years ago. The employer discharged the claimant on September 6, 2005, for misrepresenting himself when he applied for the job.

The claimant established a claim for unemployment insurance benefits during the week of January 1, 2006. The claimant filed claims for the weeks ending January 7 through March 4, 2006. The claimant received his maximum weekly benefit amount of \$310.00 for each of these weeks. The claimant also had established a previous benefit year. The claimant filed claims for the weeks ending September 10 through November 12, 2005. The claimant received a total of \$2,833.10 in benefits for these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency,

unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Since the claimant did not participate in the hearing, the evidence indicates the claimant intentionally made the decision not to report his prior misdemeanor convictions. By failing to accurately disclose his prior convictions, the claimant intentionally and substantially disregarded the employer's interests. The employer discharged the claimant for work-connected misconduct. As of January 1, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending January 7 through March 4, 2006. The claimant has been overpaid \$2,790.00 in benefits he received for these weeks.

The claimant is also not legally entitled to receive benefits for the weeks ending September 10 through November 12, 2005. The claimant has been overpaid \$2,833.10 (not \$2,633.10 as indicated in the Amended decision) in benefits he received for these weeks.

DECISION:

The representative's February 3, 2006 decision (reference 02) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 1, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending January 7 through March 4, 2006 and September 10 through November 12, 2005. The claimant has been overpaid and must repay a total of \$5,632.10 (not \$5,432.10 as indicated in the Amended Decision) in benefits he received for these weeks.

dlw/pjs/s/tjc