

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JABARI L CANADY**

Claimant

**APPEAL NO. 08A-UI-02758-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**O'REILLY AUTOMOTIVE INC**

Employer

**OC: 02/03/08 R: 02  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The employer, O'Reilly Automotive, filed an appeal from a decision dated March 11, 2008, reference 01. The decision allowed benefits to the claimant, Jabari Canady. After due notice was issued a hearing was held by telephone conference call on April 3, 2008. The claimant provided a telephone number to the Appeals Section. That number was dialed at 10:05 a.m. and the only response was a voice mail which clearly identified it as belonging to the number provided by the claimant. A message was left indicating the hearing would proceed without the claimant's participation unless he contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 10:17 a.m. the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The employer participated by Human Resources Supervisor Whitney Smith. Exhibits One through Four 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:**

Jabari Canady was employed by O'Reilly Automotive from November 20, 2007 until January 25, 2008, as a full-time inbound material handler. At the time of hire he received a copy of the employee handbook which set out the policies, procedures and disciplinary process of the company.

On January 25, 2008, the distribution center manager Harry Markly called Loss Prevention Manager John Wallace because he believed the claimant might have misappropriated some company property. Mr. Canady was wearing a hat with a company logo on it, with tags still attached. Mr. Markly had checked the inventory of the hats and found one missing. Another employee had seen the claimant on another day with another hat with tags still attached.

Mr. Wallace arrived at the distribution center that same day and interviewed witnesses Betty Sime and Jeff Sime, and then interviewed the claimant in the presence of Jerry Carson as a witness. The claimant acknowledged taking a hat with the company logo and wearing it without purchasing it. He also acknowledged he had given his badge to another employee to clock him in that morning. Both of these actions are dischargeable offenses under the company policy.

The claimant was notified he was discharged by Human Resources Supervisor Whitney Smith the same day. Jabari Canady has received unemployment benefits since filing a claim with an effective date of February 3, 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 acknowledged taking inventory and using it without paying for it, and having another employee use his badge to punch him in. Both of these are violations of known company rules which he was aware were grounds for discharge. Theft of company inventory and time is a violation of the duties and responsibilities the employer has the right to expect of an employee. It 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 11, 2008, reference 01, is reversed. Jabari Canady 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 \$816.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs