

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFREY L YOUNG**  
Claimant

**APPEAL NO. 11A-UI-03650-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOUSBY MACK INC**  
Employer

**OC: 02-13-11**  
**Claimant: Respondent (2R)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 16, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 16, 2011. The claimant did participate. The employer did participate through (representative) Kelly Housby, President and Karen Holliday, Human Resources Specialist and Mike Borchert, Consultant, and prior General Manager for the employer. Employer's Exhibit One was entered and received into the record.

**ISSUES:**

Was the claimant discharged due to job related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as the controller full time beginning September 28, 2009 through February 14, 2011 when he was discharged. On February 13 Mr. Housby went through the American express bill received for the employee's corporate credit cards and discovered a number of personal charges made by the claimant on his company issued credit card. When the claimant was given the credit card in February 2010 he signed the policy that put him on notice that the corporate American express card was only to be used for approved business expenses. The policy also provided that disciplinary action could be taken if he misused the corporate credit card. When Mr. Housby realized that the claimant had been using the credit card for his own personal use, he turned the matter over to Mr. Borchert who further investigated. Mr. Borchert discovered that the claimant had set up an accounts receivable account for himself and was consistently running a monthly balance due to the company. The claimant had not asked anyone's permission before he began to use the company's credit card for his own personal needs. At this time the employer was having trouble meeting monthly payroll and was in need of every dollar to pay wages to employees. For the last ten months of his employment, the claimant in essence borrowed as much as three-thousand dollars and as little as five hundred dollars each month for his personal monthly charges on the corporate card.

While the claimant's subordinates had knowledge of the account he had set up, upper management and none of the claimant's supervisors knew of the claimant use of the card for personal reasons until February 2011 when Mr. Housby went through the American Express bills.

The claimant has received unemployment benefits after the separation on a claim with an effective date of February 13, 2011.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The claimant knew he was not to use the corporate credit card for his own personal charges but did so in contravention of the policy he read, agreed to and signed. As the controller it was his responsibility particularly to insure or safeguard the employer's funds. By using the corporate card for his own use, he borrowed money without permission from the employer. Based on the claimant's position in the company and his knowledge of the policies, his actions amount to

sufficient substantial misconduct to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. The unemployment insurance law provides that benefits must 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 not eligible for those benefits.

**DECISION:**

The March 16, 2011 (reference 01) decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

**REMAND:** The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

---

Teresa K. Hillary  
Administrative Law Judge

---

Decision Dated and Mailed

tkh/css