

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAUL E TRUCKE**

Claimant

**APPEAL NO: 14A-UI-13357-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RELIANCE CONSTRUCTION OF IOWA**

Employer

**OC: 01/26/14**

**Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge

Iowa Code § 96.3(7) – Overpayment of Benefits

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's December 16, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because his employment separation was for nondisqualifying reasons. The claimant participated at the January 26 hearing. Todd Jepsen, the owner, and Tara Jepsen, the bookkeeper and office manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUES:**

Did the claimant voluntarily quit this employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

Has the claimant been overpaid benefits he received since November 30, 2014?

If the claimant has been overpaid benefits, is he required to pay back the overpayment?

**FINDINGS OF FACT:**

The claimant started working for the employer on February 27, 2014. He worked as a full-time construction crew employee involved in fabrication and installation. When the employer hired him, the employer agreed the claimant could have time off to complete some projects he had started with another employer. The employer does not remember the claimant asking for time off to get firewood after crops have been harvested. At the time of hire, the claimant received the employer's policies. One of the policies informed him that if he did not call or report to work for three days, the employer would consider him to have voluntarily quit.

The claimant did not call or report to work as scheduled on November 12, 13 and 14. When the claimant reported to work on November 15, the employer wanted to end his employment because of the three days he did not report to work. One of the site supervisors, Terry, asked

the employer to give the claimant a second chance. The employer agreed, but suspended the claimant from working for one day on November 15. The employer also told Terry that if the claimant did this again, he would not have a job.

The claimant worked on November 21. At the end of the day, he contacted Terry and Tony about taking time off from work on November 22, 23 and 24. Both Terry and Tony told the claimant he had to contact the employer to receive permission to take this time off. The claimant called Todd's phone number the evening of November 21. He did not leave a message for Todd.

The claimant was scheduled to work on November 22, 23, and 24. He did not report to work any of these days and he did not talk to Todd about taking time off. The claimant did not report to work because he had problems with his pickup and had to fix it. The claimant needed his pickup to get firewood. The claimant may have gotten firewood when he was gone on November 12, 13 and 14.

The evening of November 24, the claimant's cell phone was accidentally washed and ruined. The claimant used another phone on November 25 to contact the employer. The claimant indicated he had not reported to work the three previous days because he had been working on his pickup and had not called because he had things to do. Even though two site supervisors both told the claimant to talk to Todd about getting permission to take time off, the claimant did not obtain Todd's permission to take time off on November 22, 23, and 24.

The employer does work at packing plants during the weekends and must be done by Monday morning. As a result, the employer relies on employees to work as scheduled. During the November 25 phone conversation, the employer discharged the claimant for failing to report to work as scheduled without authorization and for failing to contact and talk to the employer.

During the week of November 30, the claimant filed an additional claim. The employer participated at the fact-finding interview. The claimant filed claims for the weeks ending December 6, 2014, through January 24, 2015. He received his maximum weekly benefit amount of \$269 for each of these weeks.

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

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. Even though the claimant did not call or report to work on November 22, 23, and 24, the facts do not establish that he intended to quit. This conclusion is supported by the fact the claimant called and talked to the employer on November 25. In this case, the employer terminated the claimant's employment.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

When the claimant did not call or report to work on November 12, 13 and 14 and received a one-day suspension for this, he knew or should have known his job was in jeopardy if he did this again. On November 21, two site supervisors told the claimant to talk to Todd for permission to take time off on November 22, 23 and 24. The claimant did not make a reasonable attempt to get Todd's permission to take some time off from work. The claimant's failure to obtain authorization to take time off after he was told by two site supervisors to do so amounts to an intentional and substantial disregard of the employer's interests and of an employee's duties and obligations to the employer. The employer discharged the claimant for work-connected misconduct. As of November 30, 2014, the claimant is not qualified to receive 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). Based on this decision, the claimant has been overpaid \$2152 in benefits he received for the weeks ending December 6, 2014, through January 24, 2015.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)a, b. As a result of the employer participating at the fact-finding interview, the claimant is responsible for paying back the \$2152 overpayment.

#### **DECISION:**

The representative's December 16, 2014 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of November 30, 2014, the claimant is disqualified from receiving unemployment insurance benefits. 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 December 6, 2014, through January 24, 2015. He has been overpaid \$2152 in benefits for these weeks. The claimant is responsible for paying back this overpayment of benefits.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs