

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL J THOMAS**  
Claimant

**APPEAL NO: 07A-UI-10262-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**G2 SECURE STAFF LLC**  
Employer

**OC: 09/30/07 R: 02**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

G2 Secure Staff LLC (employer) appealed a representative's October 26, 2007 decision (reference 01) that concluded Michael J. Thomas (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 November 26, 2007. The claimant participated in the hearing. Ann Alvis, the general manger, appeared on the employer's behalf. During the hearing, Employer Exhibits One, Two and Three were offered and admitted as evidence. Based on the evidence, the arguments of the parties, 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:**

The claimant started working for the employer on October 11, 2006. The employer suspended the claimant in November 2006 after he did not call or report to work. Alvis became the general manager in late January 2007. On March 26, 2007, Alvis gave the claimant a written warning for notifying the employer at 12:30 p.m. he was unable to work when he had been scheduled to work that day 9:00 a.m. to 5:00 p.m. (Employer Exhibit Three.)

On April 19, the employer gave the claimant a written warning and a three-day suspension for failing to work as scheduled on April 19. The claimant was again scheduled to work 9:00 a.m. to 5:00 p.m., but did not contact the employer until 3:45 p.m. The employer warned the claimant that if he failed to work as scheduled again without properly notifying the employer, he could be discharged. (Employer Exhibit Two.) The claimant had not reported to work on March 26 and April 19, 2007 because of personal issues involving his girlfriend.

On September 25, the claimant was scheduled to work at 4:00 a.m. When the claimant got home from working for another employee around 7:00 p.m. on September 24, he took a shower and changed his clothes. Around 10:00 p.m., police were called because of problems between the claimant and his girlfriend. The police told the claimant to immediately leave. The claimant left without taking any money or his work clothes. The claimant does not have family or relatives in the local area and just walked around. The claimant did not have any money to call the employer. The claimant did not contact the employer until 9:30 am. to report he was unable to work as scheduled because of personal issues again.

In accordance with the employer's compliance policy, the employer discharged the claimant for having three warnings for failing to report to work as scheduled and properly notifying the employer that he was unable to work as scheduled.

The claimant established a claim for unemployment insurance benefits during the week of September 30, 2007. The claimant filed claims for the weeks ending October 6 through November 24, 2007. The claimant received his maximum weekly benefit amount of \$145.00 for each of 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 section 96.5-2-a. 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).

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).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

After the April 19 warning and suspension, the claimant did not have any attendance problems for about five months. When the employer gave him the April 19 written warning and suspension, the claimant knew or should have known his job was in jeopardy if he did not properly notify the employer when he was unable to work as scheduled.

On September 25, the claimant had no idea that problems he had with his girlfriend would result in the police being called. As a result of the police being called, the claimant was told to leave immediately. This meant that around 10:00 p.m. the claimant left without his wallet, money or work clothes. The claimant walked around town but did not call the employer or attempt to notify the employer that he was unable to work until more than five hours after his shift started. Given the fact the employer warned him that his job was jeopardy when he did not properly notify the employer when he was unable to work as scheduled and the claimant had time to contact the employer between 10:00 p.m. and 4:00 a.m. that he was unable to work, the claimant's failure to properly report he was unable to work on September 25 amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected misconduct. As of September 30, 2007, 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 section 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending October 6 through November 24, 2007. The claimant has been overpaid \$1,160.00 in benefits he received for these weeks.

**DECISION:**

The representative's October 26, 2007 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 30, 2007. 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 has been overpaid and must repay a total of \$1,160.00 in benefits he received for the weeks ending October 6 through November 24, 2007.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs