

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL D MILLS**

Claimant

**APPEAL NO. 12A-UI-10624-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BOB ZIMMERMAN FORD INC**

Employer

**OC: 08/05/12**

**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge

Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Bob Zimmerman Ford, Inc. filed a timely appeal from a representative's decision dated August 24, 2012, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 2, 2012. The claimant participated. The employer participated by Ms. Michelle Bentley, director of human resources.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Michael Mills was employed by Bob Zimmerman Ford from April 4, 2011, until July 31, 2012, when he was discharged from employment. Mr. Mills most recently held the position of body shop manager. The claimant was employed on a full-time basis and paid by salary plus commissions. His immediate supervisor was Kevin Schwarzhoff, director of dealership operations.

Mr. Mills was discharged from his employment with Bob Zimmerman Ford after the employer discovered new violations of company policy. Mr. Mills had been spoken to by Kevin Schwarzhoff the preceding week about violations of policy that the company was aware of at that time. Mr. Mills had been spoken to about storing personal vehicles and boats on company property and about having his dog on company premises. Subsequent to that conversation, a company employee met with the company's human resource director and provided new information about further violations of company policy that the employer was unaware of. These included Mr. Mills allowing an underage female to perform detailing services at the dealership without the knowledge or permission of the employer. Mr. Mills had previously requested permission for his fiancée's daughter to perform these duties, but permission had been specifically declined by company management. It was also determined that Mr. Mills had

requested a company technician to perform service work on Mr. Mills' personal vehicle in violation of company policy.

Mr. Mills agrees that allowing the underage female to work at the facility was a violation of company policy. It is the claimant's position that he had the technician work on the brakes on his personal vehicle but that the technician was supposed to do so after working hours and to be paid cash by Mr. Mills for his services. It is the claimant's further belief that he was discharged because the employer desired to hire a new body shop manager.

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

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

In this case, the employer had brought to the attention of Mr. Mills a number of violations of company policy, which included having his dog at the dealership and storing personal boats and vehicles at the dealership without specific authorization. The claimant was not discharged for these offenses. While the employer was considering the severity of the discipline to be given to Mr. Mills, additional allegations came to the company's attention. It was determined that the claimant had attempted to have a company service worker work on his personal vehicle and that the service worker did so on company time without Mr. Mills reimbursing the company or preparing a work order for the repairs. More importantly, it came to the attention of the company that Mr. Mills had specifically violated a directive not to allow an underage female to perform detailing services at the dealership. Although the claimant had been specifically instructed not to do so, Mr. Mills knowingly violated that directive, creating potential liability for the company.

As the evidence in the record establishes that Mr. Mills willfully disregarded a specific directive given to him by his manager and knowingly did so, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

Iowa Code section 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.

The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

**DECISION:**

The representative's decision dated August 24, 2012, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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