

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIC J RUCKOLDT**

Claimant

**APPEAL NO. 08A-UI-02112-M**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CATITAL CITY POWER SPORTS INC**

**BIG BARN HARLEY-DAVIDSON**

Employer

**OC: 01/13/08 R: 02  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated February 20, 2008, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 25, 2008, at Des Moines. Claimant participated personally. Employer participated by Tom Reid, Service Manager; Neal Chipman, Shop Foreman; Nathan Eaton, Service Billing; and Keith Zoellner, General Manager. Claimant failed to respond to the hearing notice and did not participate. Exhibits One and Two were admitted into evidence.

Claimant called the Appeals Bureau one hour after the hearing was over. Claimant was in Kirksville, Missouri. Claimant was informed of the hearing at 8:00 a.m. in the morning. Kirksville is three hours drive from Des Moines Iowa. Claimant called the telephone number 515-281-9619, from the fact-finding decision, and was on hold for over 30 minutes. Claimant kept calling back to the same number but did not stay on hold long enough to have a representative answer. That number is one which can be answered in just five minutes or as long as 45 minutes. Claimant failed to hold on the line sufficient time to talk to a representative. Claimant did not get through to the Appeals Bureau until one hour after the hearing was over. Claimant then left a message, which call was received and returned by the undersigned on March 26, 2008. Claimant had been in Kirksville for about 10 days. Claimant had not picked up his mail in all of that time. It was not until the day of hearing that claimant had his mother collect his mail. Claimant was then called and informed of the hearing. The in-person hearing notice does not contain any contact telephone numbers for the Unemployment Appeals Bureau. Claimant did not seek out any other telephone number to call when experiencing extended wait times at the workforce development number. Claimant had sufficient time to drive to Des Moines from Kirksville with 30 minutes to spare. Claimant could have made the hearing in time or arrived prior to its conclusion. Claimant instead chose to try the same number over and over during the three and one half hours prior to the hearing. Claimant did not try to find someone to travel to the hearing location on his behalf to ask for a continuance. Only after the hearing was over did claimant make contact with the Unemployment Appeals Bureau. Claimant's request for a new hearing is denied. Claimant had ample time to notify the Appeals Bureau that he just received notice. The request is denied because claimant did not avail himself of any means but

for one telephone number to make contact. The request is also denied because claimant was dilatory in collecting his mail when out of town. The request is also denied because claimant did not make any attempt to drive to Des Moines on the day of hearing to attend. The hearing was held and a decision must now be entered on the merits.

**ISSUE:**

The issues in this matter are whether claimant was discharged for misconduct and is overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant last worked for the employer January 4, 2008.

Employer discharged claimant on January 8, 2008 because claimant threatened a coworker with violence at work. Claimant had previously been warned about this temper. Claimant was warned that further incidents would result in discharge. Notwithstanding the warning, claimant on January 4, 2008 got in the face of the shop foreman and said he would do some "fucking harm" to the foreman.

**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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge holds that the evidence has established that claimant was discharged for an act of misconduct when claimant violated the employer's policy concerning respectful treatment of coworkers. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant intentionally threatened a coworker. The prior warning weighs heavily toward a finding of intentional violation of a known company rule. Therefore, claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

The next issue concerns an overpayment of unemployment insurance benefits.

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 administrative law judge holds that claimant is overpaid unemployment insurance benefits in the amount of \$2,870.00, pursuant to Iowa Code section 96.3-7, because a decision has determined the claimant to be ineligible to receive benefits due to a discharge for misconduct. Since claimant has been disqualified for the receipt of unemployment insurance benefits, the claim shall be locked until claimant has re-qualified or is otherwise eligible.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

**DECISION:**

The decision of the representative dated February 20, 2008, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. Claimant's request for a new hearing is denied because claimant failed to make a timely motion to continue the matter to a new date. Claimant is overpaid unemployment insurance benefits in the amount of \$2,870.00.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/kjw