

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TRAVIS M HOPKINS
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DES MOINES IA 50317

PILOT TRAVEL CENTERS LLC
C/o THOMAS AND THORNGREN INC
P O BOX 280100
NASHVILLE TN 37228

Appeal Number: 04A-UI-11546-HT
OC: 09/26/04 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Pilot Travel Centers LLC (Pilot), filed an appeal from a decision dated October 18, 2004, reference 01. The decision allowed benefits to the claimant, Travis Hopkins. After due notice was issued a hearing was held by telephone conference call on November 17, 2004. The claimant participated on his own behalf. The employer participated by General Manager David Clements and Manager Cathy Cornelius.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Travis Hopkins was employed by Pilot from February 2, 2003 until September 20, 2004. He was a full-time maintenance person.

During the course of his employment the claimant received verbal warnings from General Manager David Clements and Manager Cathy Cornelius about his attendance. He was frequently tardy and knew the employer considered his attendance to be unsatisfactory.

On September 19, 2004, the claimant was scheduled to work 8:00 a.m. until 4:00 p.m. He was no-call/no-show to work. When he returned to work on Monday, September 20, 2004, Mr. Clements questioned him regarding why he had not been at work and had not called. He only indicated he could not reach a phone and did not offer any other explanation. The general manager discharged him at that time.

Travis Hopkins has received unemployment benefits since filing a claim with an effective date of September 26, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant had been warned often about his unsatisfactory attendance and he knew the employer was not pleased with his absenteeism. The final occurrence was a no-call/no-show to work. Mr. Hopkins maintains he called and talked to the manager on duty a few hours before his shift, but there is no record of that. The claimant did not tell the general manager about this call until the appeal hearing, even though he was asked for an explanation for being no-call/no-show at the time he was fired. The administrative law judge considers this highly suspect and does not find the claimant's assertion to be credible. He was no-call/no-show to work after receiving several warnings about his attendance. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

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 claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of October 18, 2004, reference 01, is reversed. Travis Hopkins is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$1,062.00.

bgh/s