

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL D DOLS
Claimant

APPEAL NO: 14A-UI-13144-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST
Employer

OC: 11/16/14
Claimant: Respondent (2)

Iowa Code § 96.5(2) – Discharge
Iowa Code § 96.3(7) – Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 9, 2014 (reference 01) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated at the January 16 hearing. Rhonda Wagoner, a benefits specialist; Ellen Sarlat, a nutrition operations specialist; Anthony Spurgetis, a human resource generalist; and Cathryn McKay; 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 concludes the claimant is not qualified to receive benefits and has been overpaid.

ISSUES:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

Has the claimant been overpaid benefits he received since November 16, 2014?

Is the claimant required to pay back any overpayment or will the employer's account be charged for any overpayment of benefits?

FINDINGS OF FACT:

The claimant started working for the employer in October 2009. He worked part time as a satellite driver. When the claimant began working, he received a copy of the employer's policy. On September 26, 2013 the claimant signed a document indicating he understood the employer's revised handbook (Employer Exhibit Two). The policy in part informs employees they must notify the human resource department within three days of any arrest. If an employee does not notify the employer, the employee is subject to termination (Employer Exhibit Three).

On November 16, 2014 the claimant was arrested for domestic abuse with injury and obstruction of emergency communication (Employer Exhibit One). The claimant worked for the employer on November 17, 18, and 19. The employer learned about the claimant's arrest from someone other than the claimant. The claimant did not report by November 20 that he had been arrested to the human resource department. The employer then talked to him on November 20.

The claimant did not report his arrest because he had not read the employer's policy and concluded that until he was convicted he was not required to report the arrest. During the November 20 meeting, the employer discharged the claimant for violating the employer's policy by failing to timely notifying the employer about his November 16 arrest.

The claimant established a claim for benefits during the week of November 16, 2014. He filed claims for benefits for the weeks ending November 22, 2014 through January 10, 2015. He received a gross benefit payment of \$2404 for these weeks. The employer participated at the fact-finding interview.

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 § 96.5(2)a.

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).

The claimant knew or should have known the employer's policy required him to notify the human resource department within three days of being arrested. If the claimant did not read or understand the policy, it was his obligation to understand the policy before he signed the verification document on September 26, 2013. By signing on September 26, 2013 he indicated he understood the contents of the handbook. The policy clearly states that all arrests must be reported within three days. The claimant failed to report his arrest even though he could have when he worked on November 17, 18, or 19. Even though the claimant may not agree with the policy, he accepted employment and as an employee is required to follow the employer's rules and policy. The claimant intentionally disregarded the employer rules. The employer discharged the claimant for reasons amounting to work-connected misconduct when he failed to timely notify the employer's human resource department that he had been arrested on November 16, 2014. As of November 16 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 is not legally entitled to receive benefits for the weeks ending November 22, 2014 through January 10, 2015. He has been overpaid a gross benefit amount of \$2404.

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. The evidence establishes the employer participated at the fact-finding interview. Therefore, the claimant is required to pay back the \$2404 overpayment.

DECISION:

The representative's December 9, 2014 (reference 01) determination is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of November 16, 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 claimant has been overpaid \$2404 in benefits he received for the weeks ending November 22, 2014, through January 10, 2015. The claimant is required to pay back the \$2404 overpayment.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

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