

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD WOODRUF
Claimant

APPEAL NO. 08A-UI-06361-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY & RESEARCH CORP
Employer

**OC: 09/16/07 R: 03
Claimant: Respondent (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Per Mar Security & Research Corporation (employer) appealed an unemployment insurance decision dated July 1, 2008, reference 03, which held that Richard Woodruf (claimant) was eligible for unemployment insurance benefits (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 28, 2008. The claimant provided a telephone number but that number did not ring when it was dialed even though dialed repeatedly. The employer participated through Donna Mulder, Payroll and Human Resources Specialist; Matt Cunningham, Site Supervisor; Stephanie Wetterling, Shift Supervisor; and Jessica Savage, Security Officer. Employer's Exhibit One was admitted into 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.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time security officer from approximately 2007 through June 10, 2008 when he was discharged for inappropriate conduct. Approximately two weeks prior to his separation, the claimant was warned about "getting in a supervisor's face." He was reading a newspaper when he was supposed to be working and the supervisor reprimanded him. The claimant apparently reacted strongly to the reprimand. On June 9, 2008, the claimant was working at "Foods" in the guard shack when he checked in a driver with a truck and trailer. The driver proceeded to drive through and then park his trailer by the fence. The claimant came out of the guard shack screaming at him and saying that he had "no fucking right to come in there and run this place" like he owns it. The claimant wanted the driver to park in a different area and told the driver that he, "will do as you are fucking told." The driver reported the claimant's threatening conduct to Security Officer Jessica Savage who called her supervisor, Stephanie Wetterling. Ms. Wetterling was at home but spoke with the driver on the phone and could still hear the claimant yelling. She went to the work facility and spoke with

the claimant; she told him that he could not talk to the drivers that way. He was sent home and told to return in the morning to speak with Matt Cunningham, the site supervisor. When he returned the following morning, he told Mr. Cunningham that he was "in the right" and did nothing wrong. Mr. Cunningham told the claimant he could not yell at the drivers and the claimant responded that he will do what he wants. The claimant's conduct was in violation of policy number 25 which prohibits threatening, intimidating or harassing personnel at any time.

The claimant filed a claim for unemployment insurance benefits effective September 16, 2007 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 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 claimant was discharged for inappropriate conduct. He threatened a driver on June 9, 2008 and subsequently refused to acknowledge his actions

were in violation of policy. Additionally, the claimant advised the site supervisor that he would do what he wanted. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 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 states pursuant to section 602.10101.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated July 1, 2008, reference 03, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for

insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,233.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css