

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH G THOMAS
Claimant

APPEAL NO. 09A-UI-05848-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KNAPP PROPERTIES INC
Employer

OC: 03/01/09
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Knapp Properties, Inc. filed an appeal from a representative's decision dated April 1, 2009, reference 02, which held that no disqualification would be imposed regarding Joseph Thomas' separation from employment. After due notice was issued, a hearing was held by telephone on May 12, 2009. Mr. Thomas participated personally. The employer participated by Jake Lundgren, Vice President for Property Management, and Andy Mains, Facility Manager. Exhibits One, Two, and Three were admitted on the employer's behalf. The employer was represented by Robin Quon of Employers Unity.

ISSUE:

At issue in this matter is whether Mr. Thomas was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Thomas was employed by Knapp Properties, Inc. from October 22, 2007 until February 19, 2009 as a full-time maintenance technician. His job involved going to various properties to perform maintenance duties as needed. Each property is coded so that the technician can attribute his work time to a specific property. The property's tenant is billed based on the time reports submitted by the technician.

Mr. Thomas was provided a company vehicle and a credit card to use when fueling the vehicle. The company vehicle is not to be driven home unless the technician is on call. If an employee uses a personal vehicle for work purposes, an expense report is to be filed and the individual is reimbursed \$.50 per mile or whatever the rate being paid by the government at the time. Employees are not to use the company credit card to fuel personal vehicles. Mr. Thomas was discharged because his fuel receipts had him at locations that differed from what he indicated as his work locations.

Mr. Thomas purchased fuel in De Soto at 1:08 p.m. on February 20, 2008 but his timesheet had him working at a location in eastern Des Moines from 12:00 until 1:00 and then at a location in Urbandale from 1:00 until 2:00. He purchased fuel in De Soto at 10:13 on March 24 but indicated on his time records that he was at a location in West Des Moines from 10:00 until 11:00. He purchased fuel in De Soto at 8:11 on April 8 but time records place him at a property on Southwest Ninth Street in Des Moines from 8:00 until 11:00. Mr. Thomas purchased fuel in De Soto at 2:20 on August 26 but his timesheet had him working in Urbandale at that time.

Mr. Thomas purchased fuel in Grimes at 9:14 on September 16 when he was to be working in Urbandale. On October 16, he purchased diesel fuel in Adel for his personal vehicle at 8:20. His timesheet had him working in Urbandale from 8:00 until 9:00. He purchased fuel in De Soto at 2:39 on October 17 but his timesheet had him working in Clive from 2:00 until 3:00. He purchased diesel for his vehicle in De Soto at 8:24 and regular fuel in West Des Moines at 10:48 on December 24. His timesheet showed him working in West Des Moines from 8:00 until 2:00.

Mr. Thomas sometimes borrowed equipment or a trailer from his brother to use in his work. His brother stores such items at a location in De Soto. The employer was aware that he sometimes borrowed equipment. Mr. Thomas lived in De Soto at the time of hire and later moved to Adel, approximately five minutes away from De Soto. As a result of the discrepancies discovered shortly before his discharge, Mr. Thomas was terminated on February 19, 2009.

Mr. Thomas filed a claim for job insurance benefits effective March 1, 2009. He has received a total of \$2,625.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Thomas was discharged because his fuel receipts did not match the locations where he was supposed to be working. The credit card the employer uses for fuel purchase is from Kum & Go. The administrative law judge can almost take official notice of the fact that Kum & Go has numerous locations throughout the Des Moines metropolitan area. It seems no coincidence that Mr. Thomas' questionable purchases were made at stations in the area where he resides. The administrative law judge is of the opinion that the purchase in the De Soto area coincided with personal errands or visits to his home.

Mr. Thomas testified that he had to use his personal vehicle when getting a trailer or other equipment from his brother. This was because the company vehicle was too small. Therefore, there would have been no reason for him to have the company vehicle in De Soto if he was not picking up equipment from his brother. However, the bulk of the purchase made in De Soto were of unleaded fuel used in the company vehicle. Employer's Exhibit 2 reveals numerous occasions on which he purchased unleaded fuel in the De Soto area at times that were not reasonably related to lunch breaks. For example, he made purchase at 10:13 on March 24; 3:50 on April 8; 8:11 on May 15; 2:20 on August 26; 9:14 on September 16; and 2:39 on October 17.

Given the times he purchased fuel for the company vehicle in the De Soto area, the administrative law judge concludes that Mr. Thomas was performing personal errands and not work-related functions. The costs for his time were billed to the employer's customers. As such, the employer had the right to expect that the customer would only be billed for time actually spent performing services on behalf of the customer. The failure to deduct the time he

spent on personal errands constituted theft as it resulted in Mr. Thomas being paid for time he did not devote to performing services for his employer. For the reasons stated herein, the administrative law judge concludes that substantial misconduct has been established. Accordingly, benefits are denied.

Mr. Thomas has received benefits since filing his claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated April 1, 2009, reference 02, is hereby reversed. Mr. Thomas was discharged for disqualifying misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Thomas will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css