

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD D ELDRIDGE
Claimant

APPEAL NO. 12A-UI-01447-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JENSEN BUILDERS LTD
Employer

OC: 01/08/12
Claimant: Respondent (2-R)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed an appeal from the February 8, 2012 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on March 12, 2012. Claimant participated with his spouse Tera Eldridge. Employer participated through Human Resources Director Tom Nelson and General Superintendent Nate Galles.

ISSUE:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits and if so, was he is overpaid benefits as a result?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a belt truck operator from December 2010 and was separated from employment on January 8, 2012. On that date, Foreman Jason Auten reported that claimant was sleeping at the shop after an argument with his wife, Tera. The employer does not allow this but does not have a policy addressing the specific issue. Claimant was sleeping in the wash bay and left on foot to go to Wal-Mart for medicine. All other areas of the premises were locked. Belt operator Bill Arndt reported to the shop at Galles' request. He found one door was unlocked and lights were on but he could not find anyone, so he set the alarm and left. Claimant returned to the work premises, which triggered the alarm again. He left again to get cigarettes and took the employer's pickup to go to a convenience store. As he was returning from the convenience store near the employer's driveway, the police pulled him over and asked if the use of the vehicle was authorized. Claimant said it had been in the past. Galles arrived. There was no smell of alcohol and Galles did not want to press charges. He and claimant returned to the shop and found the doors unlocked again. Galles told Auten to leave. Galles and claimant went to the foreman's office and talked about sleeping in the shop and using the company vehicle. Claimant said he had an argument with wife, had no place to stay, and no money for a hotel room. Galles told him he should have called him first and the shop and company vehicles are not for personal use, he was tired of problems between Auten and him, and terminated him. Galles offered to pay for a hotel room, but claimant declined and left

walking. Auten had a personal conflict history with the claimant, who had not been drinking since November. Claimant's wife, Tera, did not call Auten's wife about claimant having a company vehicle at their house or a belief that he had been drinking. He had no prior warnings for any of these issues. He had asked to use a company trailer for personal use before, but had not asked to use a company vehicle. He used a pickup for elevator work and had taken the company vehicle for the commute home.

Claimant received unemployment benefits after the separation on a claim with an effective date of January 8, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related misconduct.

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.

Although the employer does not have a policy about the personal use of company vehicles or sleeping overnight on the property, a reasonable person would request permission before doing either. The prior authority to use the trailer for personal use or the work truck to commute did not extend to the purely personal errand to purchase cigarettes. Furthermore, the claimant left at least part of the employer's premises unlocked while going to buy cigarettes, leaving it vulnerable to theft or vandalism. Claimant's use of the truck without permission, unauthorized

use of the premises, and leaving the property unlocked and unattended is disqualifying misconduct. 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 state pursuant to section 602.10101.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, claimant has received benefits but was not eligible for those benefits.

DECISION:

The February 8, 2012 (reference 01) decision is reversed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

REMAND:

The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw