

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREG CAMPBELL
Claimant

APPEAL NO. 08A-UI-02896-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROCKWELL AUTOMATION INC
Employer

**OC: 02-24-08 R: 04
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 14, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 8, 2008. The claimant provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Justine Ruegg, Human Resources Representative and Antwan Ishak, Project Manager/Test Engineering Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as full-time test engineer for Rockwell Automation from July 24, 2006 to February 22, 2008. He left work February 20, 2008, with his employer-provided laptop computer with labeling software saved to his hard drive instead of to the system. Consequently, the employer could not run its product line when the labeling software began to malfunction February 20, 2008, and the claimant could not be reached. On February 21, 2008, the employer called the claimant and asked him to return the laptop so it could get the source code and the claimant said he could not come in before noon that day but failed to call or show up at noon. He tried to e-mail the code but there was not enough information to return the product line to running status. The employer called the claimant and he said he would come in by 3:00 p.m. but again failed to do so. He called Human Resources Representative Justin Ruegg and said he was choosing not to bring his laptop in because he wanted to take his wife to a doctor's appointment. Mr. Ruegg asked the claimant to drop off the computer on his way to the appointment and the claimant said, "No. You guys are probably going to fire me anyway so this is the decision I'm making." He did return the laptop around 5:30 p.m. that evening and was a no-call/no-show February 22, 2008. Mr. Ruegg called the claimant and he said he had to take

care of his wife. Mr. Ruegg stated that because of the decisions he made about the laptop he was terminating his employment effective immediately for insubordination because his actions caused a production shutdown which took approximately three weeks to bring back to full capacity. The claimant had received three written warnings regarding his attendance; one written warning regarding safety; and one written warning regarding personal purchases on the company credit card.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant removed the employer's laptop without permission and then refused to bring it back at the times he was asked to do so. The product could not be sent out without the proper labeling and the employer was deprived of the labeling software by the claimant's actions. The claimant's decision not to return the laptop with the labeling software on it was a willful disregard of the standards of behavior the employer has the

right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

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.

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 March 14, 2008, reference 01, decision is reversed. The 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. The claimant is overpaid benefits in the amount of \$2,358.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css