

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES A BUSCHBOM
Claimant

APPEAL NO. 08A-UI-07800-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLEMONS INC
Employer

OC: 07/27/08 R: 02
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

Clemons, Inc. filed an appeal from a representative's decision dated August 22, 2008, reference 02, which held that no disqualification would be imposed regarding James Buschbom's separation from employment. After due notice was issued, a hearing was held by telephone on September 18, 2008. The employer participated by Jeff Wallin, Service Manager. Exhibits One through Seven were admitted on the employer's behalf. Mr. Buschbom did not respond to the notice of hearing.

The hearing was originally scheduled for September 15, 2008. The hearing date and time were changed at the request of the administrative law judge. As of the date and time originally set for the hearing, Mr. Buschbom had not called in a telephone number to participate. He still had not called in as of the rescheduled date, September 18, 2008.

ISSUE:

At issue in this matter is whether Mr. Buschbom was separated from employment for any disqualifying reason. There may be an additional issue as to whether he has been overpaid job insurance benefits.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Buschbom was employed by Clemons, Inc. beginning in February of 1998. He was employed by the predecessor owner when Clemons, Inc. took over the business in February of 1998. He was last employed full time as a service consultant. He was basically a liaison between the customers and the service technicians who made repairs. Mr. Buschbom was discharged for not fulfilling his job responsibilities.

Mr. Buschbom received a written warning on January 26, 2007 because he invoiced an order at a discounted rate without prior authorization. His actions were in violation of the employer's written policy. After verbal warnings on May 10 and during the week of June 18, Mr. Buschbom received a written warning on June 27, 2007 for not performing his job duties properly. He had failed to notify customers of needed maintenance service and failed to obtain authorization for diagnosis and repair before customers left. He had also failed to sell recommended services based on a vehicles

mileage and history. He was warned that a continued failure to follow specified procedures could result in his discharge.

On April 1, 2008, Mr. Buschbom received another written warning. The warning recited the fact that he had allowed a customer's vehicle to be repaired without prior authorization for a specific dollar amount. It is the employer's policy that a customer must be advised of the total repair costs and give approval before repairs are made. The warning also recited the fact that he was not keeping customers informed as to the status of repairs. He was also failing to call customers and schedule appointments when special order parts arrived. Mr. Buschbom was also failing to provide timely information that was required for technicians to be paid. The warning also addressed his failure to obtain sufficient information when inputting customers in the appointment system and his failure on some occasions to even put the customers in the appointment system. It also addressed his failure to perform a complete "walk-around" when vehicles were dropped off and his failure to check a vehicle's repair history to determine if recommended service should be offered.

The warning of April 1 was designated Mr. Buschbom's final warning. He was told he would be terminated immediately if established procedures and guidelines were not followed. On July 10, he was sent home after a customer complained on July 9. The customer complained that he had only spoken to Mr. Buschbom one time during the approximately ten days his vehicle was in for repairs. He also complained that Mr. Buschbom did not return calls to him as promised when he requested updates on his vehicle. Mr. Buschbom was told to take the following 19 days off to think about his job responsibilities and whether he was capable of meeting the employer's standards. The employer told him there would be a discussion of his continued employment on or about August 6.

The decision to discharge Mr. Buschbom was prompted by a customer complaint on July 11. The customer indicated that a part was supposed to have been ordered by Mr. Buschbom on June 3. She indicated that she checked on the status of the order on June 27 and was told by Mr. Buschbom that it should be in within the next two to three days. He was to call the customer when the part arrived but she had not heard from him. When the employer checked the status of the order on July 11, it was discovered that the part had not been ordered. The customer was very angry and stated she would not return to Clemons, Inc. for service. As a result of the complaint, Mr. Buschbom was discharged on July 17, 2008.

Mr. Buschbom filed a claim for job insurance benefits effective July 27, 2008. He has received a total of \$2,471.00 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). For reasons that follow, the administrative law judge concludes that the employer has satisfied its burden of proof. One of the essential functions of Mr. Buschbom's job was to make sure customers were being serviced timely and kept informed of the status of their repairs. He was warned repeatedly that he had to maintain contact with customers. In spite of the warnings, he continued to not call customers when status reports were required.

Mr. Buschbom was told on April 1 that he would be discharged if he again failed to adhere to established standards. In spite of the warning, he failed to call the customer who complained on July 9. He had only called the customer one time during the ten days the vehicle was in for repairs and failed to call the customer back as promised. The delays in communicating with customers had the potential of costing the employer customers. While Mr. Buschbom was on suspension, another customer complained on July 11. He had not called the customer regarding the status of the parts ordered for her vehicle. In fact, he had misled the customer on June 27 when he told her the part

should arrive in two to three days. If he had checked on the status, he would have learned that the part had not been ordered. Therefore, his statement that the part was due to arrive shortly was a deliberate falsification. If he did not actually check the status, he disregarded the employer's interests by telling the customer the part was due to arrive when he had no real idea of the status. The customer who complained on July 11 had been waiting for over one month for her part only to find it had not been ordered. The employer lost the customer's trust and possibly her future business.

The administrative law judge concludes that Mr. Buschbom's failure to maintain contact with and provide truthful information to customers constituted a substantial disregard of the standards he knew the employer expected of him. His continued failures after multiple warnings had the potential of causing the employer to lose customers. Mr. Buschbom did not participate in the hearing to provide justification for his repeated failure to maintain contact with customers. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Mr. Buschbom has received job insurance benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If an 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. Provided there is no fraud or willful misrepresentation on the part of the individual, benefits 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. This matter shall be remanded to Claims to determine if Mr. Buschbom will be required to repay benefits already received.

DECISION:

The representative's decision dated August 22, 2008, reference 02, is hereby reversed. Mr. Buschbom was discharged by Clemons, Inc. for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. This matter is remanded to Claims to determine if Mr. Buschbom will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw