

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THOMAS M TEUBERT**  
Claimant

**APPEAL NO. 12A-UI-10895-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IPSCO TUBULARS INC**  
Employer

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

Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Code § 96.3(7) – Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed an appeal from the August 31, 2012 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on October 3, 2012. Claimant responded to the hearing notice instructions but was not available when the hearing was called and did not participate. Employer participated through human resources specialist, Kathy Borkgren. Employer witness Randy Long was not available and did not participate.

**ISSUES:**

Was the claimant discharged for reasons related to disqualifying job misconduct?

Is the claimant overpaid benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a yard worker from March 2010 and was separated from employment on August 9, 2012. Claimant was subject to a random drug screen, which returned positive for prescription drugs. The employer gave him five days to provide the prescription to the MRO (medical review officer). He did not do that. When he was called in to be fired he said he did so and was allowed to retrieve the prescriptions again, which the employer faxed to doctor. The MRO said this combination of drugs (amphetamine salts, Amitriptyline, and Lunesta) was not safe to take while working in that environment. The employer's policy requires that when employees are taking medications that warn of drowsiness, inability to drive or operate machinery safely, they must report the information to the human resources department or director of environmental safety and health who will consult with the MRO. Failure to do this will result in immediate termination. If reported, the employer takes a copy of bottle label and sends it to the MRO with a request for information about safe use in the work environment. A copy is also placed with the personnel file. There is no record that claimant presented that information to the employer.

Claimant received unemployment benefits after the separation on a claim with an effective date of August 12, 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.

Employer has presented substantial and credible evidence that claimant failed to notify it that he was taking prescription medication that could potentially cause him to conduct his job duties in an unsafe manner. The employer has a strong interest in this information so it may provide a safe work environment for its employees. The failure to disclose this reasonable information contrary to specific written policy terms 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 August 31, 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.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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