

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL FRITZ**  
Claimant

**APPEAL NO. 08A-UI-02773-B**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MCCALL CO INC**  
Employer

**OC: 02/03/08 R: 02**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

McCall Company, Inc. (employer), doing business as Clean Des Moines, appealed an unemployment insurance decision dated March 18, 2008, reference 02, which held that Michael Fritz (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Des Moines, Iowa, on April 9, 2008. The claimant participated in the hearing with Laura Marshall. The employer participated through owner, Greg McCall; manager, Linda Gardner; and employees, Carlos Gomez and Ron Barker. Employer's Exhibits One through Four were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time hourly employee for this cleaning company in 1990 and was most recently working as a supervisor when he was discharged on February 4, 2008. He was discharged for a repeated failure to follow directives, excessive breaks and threatening conduct towards co-employees. As a supervisor, the claimant was responsible for supervising four other employees. He and his crew were assigned to clean the Merle Hay Mall in Des Moines, Iowa, and their shift began at 9:00 p.m. and ended at 5:00 a.m. The claimant performed satisfactorily when first assigned as a supervisor but his performance declined to an unacceptable level near the end of 2007. The employer was receiving repeated complaints from Merle Hay that the work was not getting done.

The claimant was supposed to perform his own duties for six hours and then had two hours to walk the mall to ensure all the work had been completed. The inspections were not being done. Carpets were supposed to be spot-cleaned but the claimant said at the hearing that the lights were too dim and he could not see well enough to spot-clean. The supply room was supposed

to be organized but it was a mess and the claimant failed to ensure the equipment was in good working order. The crew members called the employer and reported that they did not have working vacuums. All the floors were to be swept and the area carpets were to be put back after the floors were swept. The floors were to be auto-scrubbed and then burnished where applicable but the work was just not getting done.

The employer began to visit the mall during the night and could not find the claimant on several occasions. Employees were supposed to remain in the mall during the night shift but the claimant's crew confirmed that he had been gone for two or three hours. The claimant admitted at the hearing that he sometimes left and went to McDonalds to take home to his girlfriend. However, he also claimed that he was always there when the employer visited but could not be found because it was such a large area.

The claimant testified at the hearing that he could not supervise the crew because he had his own work to do but would not step down from the supervisor's position because he earned more money as a supervisor. He also claimed that he could not teach his crew anything because they could not speak English. The employer reported it is a mall requirement that all employees working there speak English and all his employees speak English. The claimant also harassed certain employees on his crew. He frequently told Carlos Gomez to perform jobs the claimant was assigned to complete. When Mr. Gomez questioned the claimant, he would ask Mr. Gomez if he liked his job. The claimant had difficulty with another employee named Julio. He became upset on December 26, 2007 because he felt like Julio was laughing at him and he physically pushed Julio then fired him. The claimant actually did not have the authority to terminate employees but he did so anyway and then used the discharge as a threat against the other crew members if they did not do what he told them to do.

The claimant brought in a new supervisor, Ron Barker, on January 23, 2008 since the claimant was not completing his job duties. The claimant was angry about the supervisor and refused to help him, then criticized the work he was completing. The claimant spoke disrespectfully towards Mr. Barker and refused to offer him assistance when asked. Mr. Barker saw the claimant throw a vacuum cleaner and it did not break but fell apart and had to be put back together. Mr. Barker has over 30 years of experience with this type of work but he only worked two hours before he called the employer and said he refused to work with the claimant because it was not worth it. The supervisor came to the work site and talked to the claimant and he later apologized to Mr. Barker but Mr. Barker did not change his mind about working with the claimant.

The final incident occurred on approximately February 2, 2008 when the claimant left work early without notifying his supervisor as required. He left a new supervisor alone and the supervisor had only been there about a week. The work was not completed that night and the carpets were left rolled up. The employer received a complaint from the Merle Hay Manager and its contract was in jeopardy if things did not improve. The claimant was discharged on February 4, 2008.

The claimant filed a claim for unemployment insurance benefits effective March 18, 2008 and has received benefits after the separation from employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has

discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). He was discharged for a repeated failure to follow directives, excessive breaks and threatening conduct towards co-employees. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The claimant denies any wrongdoing but the preponderance of the evidence confirms he was not completing his job duties and was mistreating co-employees. The claimant's repeated failure to follow directives was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 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 unemployment insurance decision dated March 18, 2008, reference 02, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until 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 \$2,272.00.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/css