

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES LIUZZO

Claimant

APPEAL NO: 100-UI-10926-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE STORES COMPANY INC

Employer

OC: 03/0710

Claimant: Respondent (2/R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's April 1, 2010 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non disqualifying reasons. A telephone hearing was initially held on May 25, 2010. The claimant did not participate in the hearing, but the employer did. Based on the evidence presented during the hearing, the administrative law judge reversed the decision.

The claimant appealed this decision to the Employment Appeal Board. The Employment Appeal Board remanded this matter to the Appeals Section for a new hearing.

Another telephone hearing was held on September 20, 2010. Although hearing notices were mailed a month in advance, the claimant did not respond to the hearing notice or participate in the hearing. Brad Lukes, the general manager, again participated in the hearing. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 25, 2008. The claimant worked full time as a retail parts pro.

On January 25, 2010, the claimant reported working 16 hours. The employer knew he had not worked 16 hours this day and gave the claimant a written warning for falsifying his timecard. The employer warned the claimant that if there were further incidents of dishonesty, he could be terminated.

On February 5, 2010, the claimant went to another Advance Stores Company store to return two parts. Since the claimant did not have a receipt, the manager at that store contacted Lukes

because the claimant wanted to be reimbursed for the parts, a water pump and ignition switch. When Lukes talked to the claimant he did not remember when he bought the parts and did not know where he bought the parts. Lukes checked with employer's stores in the surrounding area to see if any store had a record of the claimant purchasing these parts. None of the stores had a record. The store where the claimant worked had these two parts missing from the store's inventory. There was no record that the claimant purchased the parts from the store where he worked.

The employer discharged the claimant after concluding the claimant took parts from the store where he worked and attempted to get cash for the parts from another store. The employer discharged the claimant on February 6, 2010, for his dishonest conduct.

The claimant established a claim for benefits during the week of March 7, 2010. The claimant has filed for and received benefits since March 7, 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the evidence presented during the hearing, the employer established the claimant was discharged for theft of a water pump and an ignition switch. Since the claimant did not have a receipt, failed to provide when or where the parts were purchased and the employer's inventory was missing these parts, a preponderance of the evidence indicates the claimant took the parts from the employer without paying for them. This incident, by itself, establishes an intentional and substantial disregard of the standard of behavior the employer has a right to expect. The claimant committed work-connected misconduct. Therefore, as of March 7, 2010, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's April 1, 2010 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 7, 2010. This

disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs