

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSE R MCMAHON**  
Claimant

**APPEAL NO. 16A-UI-10365-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RELCO LOCOMOTIVES INC**  
Employer

**OC: 08/21/16**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Relco Locomotives, Inc. filed a timely appeal from a representative's decision dated September 13, 2016, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 6, 2016. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Ms. Debra Rectenbaugh-Pettit, Chief Legal Officer, and witnesses: Mr. Tim Ash, Human Resource Safety and Compliance Manager, and Mr. Steven Aschbrenner, Paint Shop Supervisor. Employer's Exhibits 1 through 4 were admitted into the hearing record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits and whether the claimant has been overpaid job insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Jesse McMahon was employed by Relco Locomotives, Inc. from January 11, 2016 until August 19, 2016 when he was discharged from employment. Mr. McMahon was employed as a full-time blaster in the company's paint department and was paid by the hour. His immediate supervisor was lead man, Gary Stansberg and Steven Aschbrenner, Paint Shop Supervisor.

Mr. McMahon was discharged on August 19, 2016 for failing to follow his work schedule and for sleeping on the job. On August 5, 2016, Mr. McMahon was observed sleeping in his car at 4:45 a.m. by the paint shop supervisor, Mr. Aschbrenner. After checking with the department lead man and determining that breaks were to be taken at their scheduled 3:00 a.m. to 3:15 a.m. time that night, the paint department manager concluded that the claimant had chosen to take an unauthorized break and to sleep when he should have been working.

Because of his conduct, Mr. McMahon was issued a verbal warning regarding sleeping on the job.

During the early morning hours of August 16, 2016, Mr. McMahon was again observed sleeping in his car by Mr. Aschbrenner. Claimant was observed sleeping in his car at 5:15 a.m. Because the break times were at their normally set times that evening and his lead man had been working during this time, Mr. Aschbrenner again concluded that the claimant had violated company policy. When questioned about his sleeping in his car, Mr. McMahon stated that he had not been feeling well. The claimant was reminded by the paint shop manager that company policy requires employees that are not feeling well to clock out and go home if they are unable to work. Mr. McMahon's lead man had reported that claimant had left for the 3:00 a.m. break and had not returned to the work area.

Upon review of the time sheets submitted by Mr. McMahon for the nights of August 5, 2016 and August 16, 2016, the employer noted that Mr. McMahon had completed the card stating that he had worked from 12:30 a.m. to 5:00 a.m. prepping a locomotive for paint on the night of August 5, 2016, and that the claimant had reported for the night of August 16 that he had been working from 4:00 a.m. to 6:30 a.m. mixing and spraying primer. The employer reasonably concluded that Mr. McMahon had not only been sleeping on the job but that he had also intentionally falsified his time reporting to make it appear he was working when in fact he was not. Because of the repetitive nature of the claimant's sleeping on the job and his failure to accurately report his work hours, a decision was made to escalate the company's progressive discipline to discharge in Mr. McMahon's case.

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

The question before the administrative law judge is whether the evidence in the record establishes misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, the evidence in the record establishes that Mr. McMahon was discharged from his employment with Relco Locomotives, Inc. because he had been caught on two occasions by the Paint Shop Supervisor sleeping in his car during times that were not authorized for breaks and when the claimant was expected to be performing services for the employer. The employer determined that breaks were available to employees at 3:00 a.m. on both nights and there were no job duties which prevented Mr. McMahon from taking his normal breaks on both occasions. The evidence further indicated that the claimant's lead man was scheduled to take breaks at the same time and took his normal breaks and resumed work after taking only the allowed time for his early morning breaks.

There was no painting or processing work that prevented the claimant from taking his normal 15-minute break at 3:00 a.m. on August 5, 2016 and the employer reasonably concluded that the claimant's failure to return to the work area was because the claimant had gone to his car to sleep instead of resuming work. On August 16, 2016, the employer again verified that a lead person who was to take breaks with Mr. McMahon had taken his break at the normal time and that the claimant had not indicated to his lead person that he was ill or unable to resume work after leaving the break at 3:00 a.m. in the morning. At approximately 5:30 a.m. the lead man noticed the claimant in the claimant's car sleeping and attempted to arouse Mr. McMahon but could not do so.

In addition to failing to take breaks at the proper times and sleeping during unauthorized times, Mr. McMahon also falsified his time reporting for the nights in question indicating on both occasions that he had been working instead of sleeping. Because of the repetitive nature of his sleeping on the job and the warning that he had been served within the same month, a decision was made to escalate the progressive discipline to discharge. That decision was reasonable under the circumstances.

For the reasons stated herein, the administrative law judge concludes that the employer has sustained its burden of proof in establishing the claimant's discharge took place under

disqualifying conditions. Accordingly, the claimant is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets all other eligibility requirements of Iowa law.

Because the claimant has been deemed ineligible for benefits, any benefits claimant has received could constitute an overpayment. The administrative record reflects that the claimant has received unemployment insurance benefits in the amount of \$2,498.00 since filing a claim with an effective date of August 21, 2016 for the week ending dates August 27, 2016 through October 1, 2016. The administrative record also establishes that the employer did participate in the fact-finding interview.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

**DECISION:**

The representative's decision dated September 13, 2016, reference 01, is reversed. Claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. Claimant has been overpaid unemployment insurance benefits in the amount of \$2,498.00 and is liable to repay that amount. The employer's account shall not be charged based upon the employer's participation in the fact-finding interview.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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