

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM J HOGUE**  
Claimant

**APPEAL NO. 08A-UI-10375-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 09/28/08 R: 03**  
**Claimant: Respondent (2-R)**

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

**STATEMENT OF THE CASE:**

Care Initiatives filed an appeal from a representative's decision dated October 29, 2008, reference 01, which held that no disqualification would be imposed regarding William Hogue's separation from employment. After due notice was issued, a hearing was held by telephone on November 20, 2008. Mr. Hogue participated personally. The employer participated by Jacalyn Gacke, Administrator, and Will Gingerich, Housekeeping/Laundry Supervisor. The employer was represented by Lynn Corbeil of Talx Corporation. Exhibits One through Six were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Hogue was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Hogue was employed by Care Initiatives from August 29, 2003 until September 25, 2008. He worked full time as a floor care technician at Westridge Nursing and Rehabilitation. He was discharged after receiving a series of disciplinary actions.

On August 21, 2008, the employer received a complaint that Mr. Hogue was not performing all of his required duties on a consistent basis. As a result, he was given a sheet that designated which duties were to be performed on which days and at what times. He received a written warning on August 26 because he failed to adequately clean and sanitize after being asked to clean a bowel movement from the floor. He also received a written warning on August 26 for taking an extended break. He was gone for 35 minutes but was only allowed to take 15 minutes. He had already taken his 30-minute lunch break for the day. Approximately one hour after he took the extended break, Mr. Hogue was found in his vehicle taking another break.

The final conduct that triggered Mr. Hogue's discharge occurred on September 23. He was required to use a swing-arm machine to clean the shower areas. After he left for the day on September 23, the supervisor called and asked him if he used the swing-arm in the showers and Mr. Hogue indicated that he did. He was asked the question several times and always responded that he did. He was told to come in for a meeting the next workday, September 25. At that time, Mr. Hogue acknowledged that he had not used the swing-arm and that he had lied to the employer. As a result of his failure to follow instructions in cleaning and his dishonesty when questioned about it, Mr. Hogue was discharged on September 25, 2008.

Mr. Hogue filed a claim for job insurance benefits effective September 28, 2008. He has received a total of \$1,242.00 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). The administrative law judge concludes that Mr. Hogue's dishonesty is sufficient, standing alone, to constitute disqualifying misconduct. He was asked repeatedly if he had used the swing-arm but repeatedly gave a false answer. He knew he had not used the swing-arm but deliberately tried to mislead the employer into believing he had. He did not acknowledge his conduct until faced with the possibility of disciplinary action.

Mr. Hogue owed his employer the duty of honesty. He breached that duty when he intentionally gave false information as to whether he had performed a required task. His dishonesty constituted a substantial disregard of the standards the employer had the right to expect. For the reasons cited herein, it is concluded that disqualifying misconduct has been established. As such, benefits are denied.

Mr. Hogue has received benefits since filing his claim. 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. 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, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Mr. Hogue will be required to repay benefits already received.

#### **DECISION:**

The representative's decision dated October 29, 2008, reference 01, is hereby reversed. Mr. Hogue was discharged 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 the amount of any overpayment and whether Mr. Hogue will be required to repay benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs