

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GEORGE W DUBBER
Claimant

APPEAL NO. 07A-UI-04286-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA TELEPRODUCTION CENTER INC
SCREENSCAPE STUDIOS**
Employer

**OC: 03/25/07 R: 02
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Screenscape Studios (employer) appealed a representative's April 16, 2007 decision (reference 01) that concluded George W. Dubber (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 24, 2007. The claimant responded to the hearing notice, but was not available for the hearing. A message was left on the claimant's answering machine to contact the Appeals Section immediately if he wanted to participate in the hearing. The claimant did not respond to the message left for him. Todd Hyde, the vice president, appeared on the employer's behalf. 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:

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

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer in January 2005. He worked as a full-time editor. Hyde supervised the claimant. When an employee is unable to work as scheduled, the employer requires employees to notify the employer before 9:00 a.m. that the employee is unable to work as scheduled.

In October 2006, there were a number of days in which the claimant did not report to work or notify the employer that he was unable to work as scheduled. The employer gave the claimant a warning in October that when the claimant was unable to work as scheduled, the employer required him to contact the employer before 9:00 a.m. The employer is a small company and

management has to know when an employee is unable to work so a client can be apprised about the status of on-going projects.

On March 12, 2007, the employer knew the claimant did not feel well. On March 13, the claimant did not report to work or notify the employer by 9:00 a.m. that he was unable to work. The employer attempted to contact the claimant by phone. Sometime between 9:30 and 10:00 a.m. a receptionist received a text message the claimant sent at 8:15 a.m. informing the employer he was hospitalized. The employer received confirmation later that the claimant was hospitalized. The employer also knew the claimant would receive hyperbaric treatments for his medical condition.

On March 18, the claimant and Hyde talked on the phone. During this conversation, the claimant indicated he would be at work the next day. The claimant did not report to work or call the employer on March 19. On March 20, the employer sent the claimant an email reminding him that he repeatedly violated the employer's policy by failing to notify the employer when he was not reporting to work. The employer reminded the claimant that the employer had to know when he was not able to work. The claimant properly notified the employer on March 21, 22 and 23 that he was ill and unable to work.

Hyde again talked to the claimant on March 25 about when he was going to report to work. The employer had a project for a client and needed the claimant to finish the project. The claimant told Hyde he was much better and would be at work the next day. The claimant did not call or report to work on March 26 or 27.

When the claimant had not called or reported to work by March 27, the employer discharged the claimant for violating the employer's call-in procedure when an employee is unable to work as scheduled. The employer sent the claimant a dismissal notice on March 27.

The claimant established a claim for unemployment insurance benefits during the week of March 25, 2007. The claimant filed claims for the weeks ending April 7 through 21, 2007. He received his maximum weekly benefit amount of \$334.00 for each of these weeks.

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).

The claimant knew or should have known since October that the when he was unable to work as scheduled, the employer required him to contact the employer by 9:00 a.m. The employer gave the claimant several opportunities to follow the employer's rules. Even though the claimant informed the employer on March 18 he would be at work the next day, the claimant did not call or report to work. Instead of discharging the claimant at that time, the employer sent the claimant an email reminding him that the employer needed to be contacted on the days the

claimant was unable to work as scheduled. The claimant then called the employer by 9:00 a.m. on March 21, 22 and 23 and let the employer know he was still unable to work as scheduled.

The claimant failed to call the employer on March 26 and 27 to report he was still unable to work, even though on March 25 the claimant assured the employer he would report to work the next day. The claimant's repeated failure to properly notify the employer he was unable to work as scheduled amounts to an intentional and substantial disregard of the employer's interests and a substantial disregard of the standard of behavior the employer has a right to expect from an employee. The claimant committed work-connected misconduct. As of March 25, 2007, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits for the weeks ending April 7 through 21, 2007. The claimant has been overpaid \$1,002.00 in benefits he received for these weeks.

DECISION:

The representative's April 16, 2007 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 25, 2007. 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 claimant is not legally entitled to receive benefits for the weeks ending April 7 through 21, 2007. The claimant has been overpaid and must repay a total of \$1,002.00 in benefits he received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw