

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW J WATERS-BICKEL

Claimant

QUAD CITY SALVAGE AUCTION INC

QSCA

Employer

APPEAL NO: 100-UI-17493-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/22/10

Claimant: Appellant (1-R)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 21, 2010, reference 01, that held he was discharged for misconduct on August 25, 2010, and benefits are denied. After a telephone hearing was held, an ALJ issued a decision on November 5, 2010 that allowed claimant benefits. The employer appealed, and the EAB remanded this matter for a new hearing.

A hearing was held on March 7, 2011. The claimant participated. Selena Castle, HR Manager, and Neal Lindle, General Manager, participated for the employer. Employer Exhibits A, B & C were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on January 10, 2008, and last worked for the employer as a full-time yard manager on August 25, 2010. The claimant received the employer workplace violence prevention policy. The policy prohibits offensive conduct that includes yelling, cursing and intimidating conduct in the presence of any employee and/or customer.

During a performance evaluation in April 2009, GM Lindle listed as an objective that claimant manage his anger in a professional way. In May 2010, GM Lindle issued claimant a verbal warning for getting upset and over-reacting in front of an insurance agent to the point he was sent him home for the rest of the day. Lindle told claimant if it happened again, he would be terminated.

During the latter part of August, claimant requested two-days off that the employer approved. Later, he added a third day and Lindle approved it for Wednesday, August 25. Claimant amended his request to add Thursday and Friday that Lindle denied. Claimant came into work on August 25 to discuss with Lindle why he denied the additional days. He confronted Lindle by yelling and using profanity in the presence of two customer-agents, and Lindle went to his office followed by the claimant. Lindle told claimant to take the rest of the day off. When claimant returned the following day, he was terminated for violation of the employer workplace policy.

When the ALJ reversed the department decision, it allowed claimant benefits on his current claim.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on August 25, 2010, for a repeated violation of company workplace policy.

The claimant knew the employer policy due to warnings and his repeated violation for the same offense constitutes job disqualifying misconduct. Claimant was put on notice in May 2010 that a further incident would result in termination. Although claimant might have had a good reason for

confronting supervisor about denying vacation time, yelling and cursing at him in the presence of customers is misconduct.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since claimant has received benefits on his current unemployment claim, this matter is remanded to claims for an overpayment decision.

DECISION:

The department decision dated September 21, 2010, reference 01, is affirmed. The claimant was discharged for misconduct on August 25, 2010. Benefits are denied until the claimant

requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The overpayment matter is remanded to claims.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs