

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**SHON CLAUSEN  
820 AURORA AVE  
DES MOINES IA 50313**

**DES MOINES INDEPENDENT  
COMMUNITY SCHOOL DISTRICT  
ATTN BUSINESS/ FINANCE  
1801 16<sup>TH</sup> ST  
DES MOINES IA 50314-1902**

**Appeal Number: 05A-UI-11655-RT  
OC: 10/09/05 R: 02  
Claimant: Respondent (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The employer, Des Moines Independent Community School District, filed a timely appeal from an unemployment insurance decision dated November 2, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Shon Clausen. After due notice was issued, a telephone hearing was held on December 2, 2005, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Not only did the claimant receive a notice of appeal but the claimant was also mailed a copy of the employer's appeal on November 16, 2005. Cathy McKay, Risk Manager, participated in the hearing for the employer. The administrative law judge takes official notice

of Iowa Workforce Development Department unemployment insurance records for the claimant. Employer's Exhibit 1 was admitted into evidence.

The claimant called the appeals section at 2:34 p.m. on Friday, December 2, 2005 and left a message for the administrative law judge to call him back. The administrative law judge called the claimant back at 2:48 p.m. The claimant informed the administrative law judge that his address is 820 Aurora, which is the address on the notice and further informed the administrative law judge that he had received the notice for the hearing and he knew the hearing was on, December 2, 2005. However, he did not read the notice carefully and had misplaced it and thought that the appeals section would call him. The notice is quite clear that a party must call the appeals section immediately upon receipt of the notice if the party wants to participate in the hearing and a failure to do so will result in the administrative law judge not calling the party on the day of the hearing. The claimant admitted that it was his fault and that it was his negligence that he had misplaced the notice. The claimant also seemed to indicate that he had received a copy of the employer's appeal, which was also sent to him at the right address by the appeals section. These two documents should have put the claimant on notice of the hearing and the time of the hearing. The claimant knew the day of the hearing but apparently had forgotten the time of the hearing. The administrative law judge informed the claimant that he had already held the hearing and could not take evidence from him. The hearing began when the record was opened at 11:03 a.m. and ended when the record was closed at 11:16 a.m. on December 2, 2005. The administrative law judge informed the claimant that he would treat his telephone call as a request to reopen the record and reschedule the hearing, which request was made after the record had been closed and the hearing held. The following rule is applicable here:

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The administrative law judge concludes that the claimant has not demonstrated good cause to reopen the record and reschedule the hearing. He received the notice of appeal and noted the day of the hearing but did not read it carefully to see that he had to call in a number and then forgot the time of the hearing and misplaced the notice. Accordingly, the claimant's request to reopen the record and reschedule the hearing is hereby denied.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a part-time bus driver from September 10, 2001 until he was discharged on September 27, 2005. The claimant was discharged by a letter dated September 26, 2005, which appears at Employer's Exhibit 1. The claimant was discharged for the reasons set out in that letter. The allegations and statements in that letter are true and correct pursuant to an investigation by the employer. The employer has policies in its board policies and work rules that prohibit the behaviors as set out in Employer's Exhibit 1. The claimant also received training in these policies. The claimant had received no relevant warnings or disciplines.

Pursuant to his claim for unemployment insurance benefits filed effective October 9, 2005, the claimant has received unemployment insurance benefits in the amount of \$1,409.00 as follows: \$364.00 per week for three weeks, from benefit week ending October 15, 2005 to benefit week ending October 29, 2005 and \$317.00 for benefit week ending November 5, 2005 (earnings \$138.00).

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer's witness, Cathy McKay, Risk Manager, credibly testified and the administrative law judge concludes, that the claimant was discharged effective September 27, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. Ms. McKay credibly testified that the claimant was discharged by a letter dated September 26, 2005 addressed to him as shown at Employer's Exhibit 1. Ms. McKay further credibly testified that the allegations and statements therein were actually committed by the claimant. The employer conducted an investigation, which resulted in the findings contained in that letter. Ms. McKay further credibly testified that the employer has board policies and work rules prohibiting the behaviors as set out in Employer's Exhibit 1. Finally, Ms. McKay credibly testified that the claimant received training in these policies. Accordingly, the administrative law judge concludes that the claimant's actions as set out in Employer's Exhibit 1 violated the employer's policies and were deliberate acts or omissions constituting a material breach of his duties and obligations arising out of his workers contract of employment and evince a willful and wanton disregard of the employer's interest and are disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct, and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, he requalifies for such benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,409.00 since separating from the employer herein on or about September 27, 2005 and filing for such benefits effective October 9, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and

is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions Iowa law.

DECISION:

The representative's decision of November 2, 2005, reference 01, is reversed. The claimant, Shon Clausen, is not entitled to receive unemployment insurance benefits until, or unless, he requalifies for such benefits, because he was discharged for disqualifying misconduct. He has been overpaid unemployment insurance benefits in the amount of \$1,409.00.

dj/kjw