

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

WILLIAM L SLATER  
LOT 13  
330 HAWKEYE DR  
WILLIAMSBURG IA 52361

FOUNDATIONS UNLIMITED INC  
607 'A' AVE  
KALONA IA 52247-9760

Appeal Number: 06A-UI-00132-HT  
OC: 02/06/05 R: 03  
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  
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Foundations Unlimited, filed an appeal from a decision dated December 30, 2005, reference 06. The decision allowed benefits to the claimant, William Slater. After due notice was issued, a hearing was held by telephone conference call on January 23, 2006. The claimant participated on his own behalf. The employer participated by President Ben Hawbaker.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: William Slater was employed by Foundations Unlimited from June 3 until December 8, 2005. He was a full-time general laborer.

On December 8, 2005, the work crew had called Supervisor Ronald Carey several times to find out if it was going to work that day or not, since the weather was bad. Mr. Carey became irritated and frustrated, since the crewmembers kept calling him when he had told them to contact President Ben Hawbaker. His phone rang and he saw the claimant's number come up on the caller ID and he lost his temper. He picked up the phone and did not realize he was talking to Mr. Slater's girlfriend and was verbally abusive.

The claimant heard about the incident from his girlfriend and called Mr. Carey back, but the supervisor saw the same phone number on the caller ID and did not answer. The claimant left a threatening message, telling Mr. Carey he was "going to kick [his] ass," and threatening to "break him in half." He also said if the supervisor ever spoke to his girlfriend that way again he would "fucking kill [him]."

The supervisor reported the incident to Mr. Hawbaker, and the president discharged the claimant by phone. The employer did listen to the voice mail message and confirmed the supervisor's report. The supervisor was given a written reprimand for his conduct on the phone.

William Slater has received unemployment benefits since filing an additional claim with an effective date of December 4, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes 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 claimant was discharged for making threats of physical harm and death against a supervisor. While it is understandable the claimant was angry about the incident, this type of threat to a supervisor was disproportionate to the situation. The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer, and the claimant is disqualified.

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 claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The representative's decision of December 30, 2005, reference 06, is reversed. William Slater is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$714.00.

bgh/kjw