

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

TODD D OETTING  
1455 ROLLING HILLS  
COUNCIL BLUFFS IA 51501

RHODEN AUTO CENTER INC  
PO BOX 6007  
OMAHA NE 68106

**AMENDED**

Appeal Number: 05A-UI-04618-BT  
OC: 04/03/05 R: 01  
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 – Overpayment

STATEMENT OF THE CASE:

Rhoden Auto Center, Inc. (employer) appealed an unemployment insurance decision dated April 27, 2005, reference 01, which held that Todd Oetting (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 20, 2005. The claimant participated in the hearing. The employer participated through Kerry Sellmeyer, Service Manager, and Employer Representative Dawn Fox. Employer's Exhibits One and Two were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time service technician from October 7, 2002 through April 8, 2005. He was discharged for his repeated refusal to follow directives. Service technicians are paid through commission and the amount paid for each job is based on manufacturer guidelines. That amount is further determined by whether the work is done per warranty or through self-pay. Each job is rated as to how long it should take to complete the task and the technician is paid a flat rate, regardless if it takes more or less time than is estimated. Technicians do not have the right to pick and choose what jobs they will take.

The claimant previously received three written warnings and one verbal warning for the same violation, along with the problem of having a poor attitude. Two of those warnings included suspensions. The final incident occurred on April 6, 2005, when the claimant refused to work on a 2005 Jeep, which had transmission problems. He said he looked at it but when the computer could not immediately diagnose the problem, he refused the job. The claimant was the transmission specialist and had been in that position for the last two years. He told the employer he did not want to work on it because he would not recoup the money, which meant he felt the job would take longer than required. At the hearing, the claimant said he was worried about the liability if he could not fix it correctly, but the employer testified nothing was mentioned at the time about a fear of liability. He told the employer to send the Jeep out to be fixed and also said he would rather sit around than work on the Jeep. The claimant only "flagged" or recorded "3.8" hours of work that day. The Jeep was assigned to another technician who fixed it without problem. The claimant did not work on the following day and was discharged when he returned.

The claimant filed a claim for unemployment insurance benefits effective April 27, 2005 and has received benefits after the separation from employment in the amount of \$1,670.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for his repeated refusal to follow the employer's directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). Technicians were not allowed to pick and choose what jobs they would take, yet, it appears the claimant had done this repeatedly. The claimant was qualified to perform the work and if he was concerned about liability, he could have always gone to the employer with any problems so that was not a valid issue. The claimant's failure to follow directives was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The unemployment insurance decision dated April 27, 2005, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,670.00.

sdb/sc/pjs