

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**BENJAMIN C HASTINGS**  
Claimant

**T3 CONCRETE PUMPING LLC**  
Employer

**APPEAL 20A-UI-04601-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (1)**

---

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

On May 26, 2020, the claimant filed an appeal from the May 15, 2020, (reference 03) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on June 11, 2020. Claimant participated. Employer participated through owner Anthony Davis and owner Joe Obrien.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Was the claimant overpaid unemployment insurance benefits?  
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on March 19, 2018. Claimant last worked as a full-time concrete pump operator. Claimant was separated from employment on February 22, 2020, when he was terminated.

Employer has a policy prohibiting disorderly conduct and consumption of alcohol in the workplace. Claimant was aware of the policy.

On February 21, 2020, claimant went to the workplace in the middle of the night and was intoxicated. At 1:21 a.m., claimant began sending text messages to owner Anthony Davis stating that he was at work and was intoxicated. Claimant sent text messages for the next three hours that indicated he was intoxicated.

At about 5:30 a.m. or 6:00 a.m., Davis arrived at work. Claimant was filling up a concrete pump with water. Davis called another operator, Dan, for help. Dan took over the job. Davis drove claimant to the gas station to get him something to eat. Claimant bought beer. Davis offered to

drive claimant home or somewhere else, but he declined. Claimant spent the morning drinking beer in the workplace and behaving in a disorderly manner. Owner Joe Obrien arrived at the workplace and talked to Davis. They decided to call the police. The police arrived at the workplace to talk to claimant. Claimant ran away from the police at first. After law enforcement caught up with claimant, he was arrested for public intoxication.

The next day, on February 22, 2020, claimant sent a text message to Obrien asking if he still had a job. Obrien stated that claimant violated company policy and his employment had ended.

Claimant had never been previously disciplined for similar conduct.

Since filing this claim with an effective date of March 15, 2020, claimant has received regular, state-funded unemployment insurance benefits for the seven weeks ending May 2, 2020, in the gross, total amount of \$4,137.00. Claimant also received Federal Pandemic Unemployment Compensation (FPUC) for the five weeks ending May 2, 2020, for the gross, total amount of \$3,000.00.

### **OVERPAYMENT**

Because claimant is not eligible for regular, state-funded unemployment insurance benefits, the next issue is whether claimant was overpaid benefits prior to the denial decision being issued.

Iowa Code § 96.3(7) provides, in pertinent part:

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 § 96.8, subsection 5. . . .

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$4,137.00 pursuant to Iowa Code § 96.3(7), as claimant was not eligible for benefits during the seven weeks ending May 2, 2020.

The administrative law judge additionally concludes claimant has been overpaid Federal Pandemic Unemployment Compensation.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular

compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Here, the claimant is disqualified from receiving regular unemployment insurance (UI) benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation (FPUC) at this time. In addition to the regular UI benefits claimant received, claimant also received an additional \$3,000.00 in FPUC benefits for the five-week period ending May 2, 2020. Claimant is required to repay those benefits.

**DECISION:**

The May 15, 2020, (reference 03) unemployment insurance decision is affirmed. The claimant was discharged for disqualifying job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. Claimant is overpaid regular, state-funded unemployment insurance benefits in the amount of \$4,137.00. Claimant is overpaid Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$3,000.00. Claimant will have to repay these benefits unless he applies and is approved for Pandemic Unemployment Compensation, as noted in the instructions below.



---

Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

June 26, 2020  
Decision Dated and Mailed

cal/sam

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.