

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON L SCHROCK
Claimant

APPEAL NO. 13A-UI-01747-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE SCHIMBERG CO
Employer

OC: 01/06/13
Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated February 8, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on August 6, 2013, in Cedar Rapids, Iowa. The claimant participated by telephone. The employer participated by Joe Schimberg, Owner/Manager, and Donita Sanderson, Human Resources. The record consists of the testimony of Joe Schimberg; the testimony of Donita Sanderson; the testimony of Brandon Schrock; and Employer's Exhibits 1-8.

ISSUES:

Whether the claimant was discharged for misconduct; and

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence, makes the following findings of fact:

The employer is a wholesale distributor of pipes, valves and fittings. The claimant worked at a warehouse in Cedar Rapids, Iowa. The claimant was hired on April 19, 2007. His last day of work was January 4, 2013. He was terminated on January 4, 2013. At the time of his termination, the claimant was a full-time warehouse worker. From August 2010 through August 2011 he worked in the sales department.

The incident that led to the claimant's termination occurred on December 15, 2012. One of the employer's customers contacted the employer about some statements that had been made by the claimant to an employee of the customer. The claimant was at a bar in Alburnett and approached the customer's employee. The claimant made statements about Scott McMurrin, a salesman for the employer. According to the claimant, the employer was not giving the customer the same quotes as that customer's competitor was getting. Mr. McMurrin

“intentionally forwarded CUSTOMER’S take offs to their competitor.” (Exhibit 2) In addition, the claimant said that Mr. McMurrin had a close relationship with an officer of the competitor. (Exhibit 2)

The employer, upon receipt of this information, had a meeting with the claimant on December 21, 2012. The claimant admitted that he had said these things about Mr. McMurrin. The claimant disliked Mr. McMurrin. The employer told the claimant that additional investigation would be done. Another meeting was held on January 2, 2013. The claimant had no further explanation for what he had said and he was placed on administrative leave. He was then terminated on January 4, 2013.

The employer has a written policy concerning confidentiality. The policy states that “all employees will maintain confidentiality of customer, vendor or Schimberg Co. information or records.” (Exhibit 3) The claimant was aware of this policy. (Exhibit 8)

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. An employer can reasonably expect that an employee will follow

written work rules concerning performance and conduct. The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The claimant engaged in a conversation with a customer's employee wherein he divulged confidential information that was harmful to the employer. The claimant initiated the contact with the customer's employee at the bar. The claimant volunteered the information concerning Mr. McMurrin. This was not an accidental communication on the part of the claimant. The claimant's conduct not only violated a known policy on confidentiality, but breached a fundamental duty of loyalty toward the employer. This is misconduct. Benefits are denied.

The next issue is overpayment of benefits.

Iowa Code section 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.

The overpayment issue is remanded to the Claims Section for determination.

DECISION:

The decision of the representative dated February 8, 2013, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefits amount, provided claimant

is otherwise eligible. The overpayment issue is remanded to the Claims Section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css