

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE R BROWN
Claimant

APPEAL NO. 10A-UI-05764-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CDS GLOBAL INC
Employer

**Original Claim: 03/14/10
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated April 8, 2010, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a hearing was held by telephone on May 25, 2010. Although duly notified, the claimant was not available at the telephone number provided. Two messages were left, but the claimant did not respond. The employer participated by Ms. Chris Groat, and Ms. Theresa Brackett.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Jamie Brown was employed by CDS Global, Inc. from April 18, 1998 until March 15, 2010, when she was discharged from employment. Ms. Brown worked as a full-time supervisor and was paid by the hour. Her immediate supervisor was Theresa Brackett.

The claimant was discharged after she was personally observed by her immediate supervisor violating company policy by possessing alcohol at the workplace and taking excessive breaks. Based upon an employee complaint, the employer had investigated Ms. Brown and other individuals' conduct at the workplace. A review of video surveillance tapes, computer card swipes, and other documentation methods, showed that the claimant had been taking breaks and talking on the telephone for personal reasons far in excess of any reasonable amount allowed by company policy or business needs. Based upon the claimant's apparent possession/use of alcohol in the workplace, as well as the records that show that the claimant had taken breaks and been on the phone in excess of time allowed by company policy, a decision was made to terminate Ms. Brown from her employment. The claimant had no reasonable explanation for her conduct.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Brown was discharged for misconduct in connection with the employment. It does.

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.

The evidence in this case establishes that Ms. Brown violated numerous company policies by possessing and/or using alcohol at the workplace during working hours, taking breaks far in excess of times allowed by company policy, and engaging in lengthy telephone conversations with no apparent business purpose. Ms. Brown was aware of the company policies, as she had been a long-time employee and held a supervisory position with the company. The claimant had also issued disciplinary actions to subordinates for taking excessive time away from work and thus was aware of the company's rules and expectations.

There being no evidence to the contrary, the administrative law judge concludes, based upon the evidence in the record, that the employer has sustained its burden of proof in showing that the claimant's conduct showed a willful disregard for the employer's interests and standards of behavior that the employer had a right to expect of its employees under the provisions of the Iowa Employment Security Law. Benefits are withheld.

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 claimant has received unemployment insurance benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the Unemployment Insurance Services Division.

DECISION:

The representative's decision dated April 8, 2010, reference 01, is reversed. Jamie Brown is disqualified and benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay the unemployment insurance benefits she has received is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw