

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WANDA D MILLER
Claimant

APPEAL NO. 11A-UI-13129-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 09/04/11
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 29, 2011, reference 04, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 27, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Gayla Harrison, attorney at law. David Williams participated in the hearing on behalf of the employer with witnesses Bonny Provenzano and Rochelle Thompson. Exhibit A was admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a housekeeper from September 10, 2010, to August 9, 2011. The claimant was informed and understood that under the employer's work rules, employees were required to notify their supervisor two hours before the start of their shift if they were not able to work as scheduled.

The claimant called her supervisor on the morning of August 12 and told her that she would not be at work because her hand was locked up. The claimant when to the emergency room that day and was examined by a doctor. The doctor excused the claimant from working for three days.

The next time that the claimant was scheduled to work was on the morning of August 15. The night before, she had called the nurse's station and left a message that she would be reporting to work at 7:30 a.m. on August 15. When the claimant came in at 7:30 a.m. on August 15, she provided her supervisor with her medical excuse dated August 12 that excused her from working for three days. The claimant asked her supervisor whether she was fired. Her

supervisor told her that she was not fired. The claimant told her supervisor that her hand was still locked up and she was not able to work that day. The supervisor allowed the claimant to go home that day.

The claimant was absent from work without notice on August 16. On August 17, the claimant called her supervisor and again asked if she still had a job. The supervisor said she would talk to the supervisor and get back to her. The administrator agreed that she would let the claimant come back with a final warning. When the supervisor told the claimant that she could come back on August 18, the claimant insisted that she could not come back for another week because she was under a doctor's care. The supervisor told her that she could have a week off if she provided a doctor's note excusing her from work.

The claimant did not report to work on August 18. She did not contact the employer to inform the employer that she was unable to work. She did not provide a doctor's excuse taking her off work. The claimant had no further contact with the employer and did not bring in a doctor's excuse.

As a result of the claimant's failure to report to work or bring in a doctor's excuse on August 18 and her previous absences, she was discharged for excessive unexcused absenteeism on August 18, 2011.

The claimant filed for and received a total of \$2,870.00 in unemployment insurance benefits for the weeks between September 4 and November 12, 2011.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides:

Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant was absent from work on August 16. While she may have had reasonable grounds for the absence due to the problems with her hand, she did not properly notify the employer. When she called in on August 17, she was told that she would be allowed to return to work if she provided medical excuse for her days missed. The claimant was absent without proper notice on August 18 and she did not provide a medical excuse as requested. The requirement that she provide an excuse was reasonable. She never contacted the employer

again. It is clear that she knew her job was in jeopardy because she asked if she had been fired when she came to the facility on August 15 and she asked if she still had a job when she called her supervisor on August 17 after her unreported absence on August 16. I conclude that her unreported absences and failure to obtain a medical excuse constitute an intentional disregard of the duty owed by the claimant to the employer. Work-connected misconduct has been established in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated September 29, 2011, reference 04, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw