

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA MEADE

Claimant

APPEAL NO: 11A-UI-13127-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

OC: 09/11/11

Claimant: Respondent (2/R)

Section 96.5-2-a – Discharge

Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The University of Iowa (employer) appealed a representative's September 29, 2011 decision (reference 01) that concluded Barbara Meade (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on October 26, 2011. The claimant received the hearing notice and responded by sending a statement to the Appeals Section on October 12. The statement did not explicitly indicate that the claimant was offering the statement in lieu of her direct participation, but as the claimant did not call in and provide a telephone number to participate in the hearing, the administrative law judge inferred that this was her intent; the statement was admitted to the hearing record as Claimant's Exhibit A. Mary Eggenburg appeared on the employer's behalf and presented testimony from one other witness, Marcy Bandy. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 29, 2008. She worked full-time as a patient account representative. Her last day of work was September 12, 2011. The employer discharged her on that date. The stated reason for the discharge was unauthorized absence, falsification of time records, and lying during the investigation, an ethics violation.

The claimant's normal work shift was to work from 8:30 a.m. to 3:30 p.m. On August 29 the claimant called in an absence due to a leg condition covered by intermittent FMLA (Family Medical Leave). The employer then received reports that the claimant had been seen at an area casino. On September 1 the employer conducted an investigatory meeting with the claimant. The claimant responded that she was home all day, but that afternoon she had gone

to the casino at about 4:30 p.m. after getting her daughter after school. The claimant was advised that there would be further review and that disciplinary action could still follow.

The employer obtained statements from three witnesses who had seen the claimant at the casino playing slots from about 2:00 p.m. until 4:30 p.m. Because the employer concluded that the claimant had lied during the investigation and that she had provided a false reason for her absence, the employer discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective September 11, 2011. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's provision of a false reason for her absence, as well as her lying about the matter during the investigation, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. White v. Employment Appeal Board, 448 N.W.2d 691 (Iowa 1989). The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 determining

the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's September 29, 2011 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of September 11, 2011. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw