

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI A JENNERJOHN
Claimant

APPEAL NO. 10A-UI-06668-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A TO Z SNACKS INC
Employer

OC: 03/21/10
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 April 28, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 28, 2010. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Craig Zebuhr participated in the hearing on behalf of the employer.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked part time for the employer as a route driver and warehouse worker from late 2007, to March 3, 2010. The route driver's job was for about 8 hours per week, with an additional one or two days per week in the warehouse. Craig Zebuhr is the vice president of the company.

The claimant had a history of excessive absenteeism during her employment. From August through December 2008, she was absent seven times, including two times without any notice to the employer. From January through December 2009, she was absent 18 times, including three times without notice to the employer. She was absent three times from January to March 3, 2010.

On March 3, 2010, the claimant notified the employer that she could no longer work in the warehouse because she had accepted a job with the census. She said she would be still be able to work her delivery route, but Zebuhr decided based on her unwillingness to work in the warehouse and her history of unreliability, that she would be discharged from employment.

The claimant filed for and received a total of \$350.00 in unemployment insurance benefits for the weeks between March 21 and May 7, 2010.

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 section 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).

The claimant's unwillingness to work in the warehouse and her history of unreliability, including absences without notice to the employer, amounts to a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law 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 section 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 section 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated April 28, 2010, reference 01, 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 section 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs