

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CANDICE S STEPHEN
Claimant

APPEAL NO. 11A-UI-01226-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST
Employer

OC: 10/24/10
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 January 24, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 3, 2011. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Kathy McKay participated in the hearing on behalf of the employer with witnesses Naki Allen and Jane Bishop. This is a duplicate decision to the one issued in 11A-UI-01227-SWT, which appears to be due to wages being reported under two location account numbers for this employer.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked for the employer as a children's caregiver in the employer's afterschool program for elementary children. She was informed and understood that under the employer's work rules, employees were prohibited from using or possessing alcohol or drugs on school property or being impaired by intoxicants while in the workplace.

On October 26, 2010, the claimant consumed alcohol before reporting to work at about 3:00 p.m. After she reported to work, several school employees detected the smell of alcohol on her breath. Naki Allen, the program specialist, was contacted regarding the school personnel's concern that she was working while impaired. Allen reported to the claimant's workplace at about 3:50 p.m. and approached her while she was helping a child putting together a puzzle. Allen could also smell the odor of alcohol on the claimant's breath. Allen asked the claimant if she had been drinking before she came to work that day. The claimant admitted that she had drunk wine at lunch. Allen determined the claimant had reported to work while impaired and told the claimant that she could not have her work in her condition. The claimant

said she understood and left work. The claimant was impaired by alcohol while in the workplace on October 26.

Jane Bishop, the administrator, called the claimant that night and told her she was on administrative leave. On October 28, the claimant called and left a message for Bishop that she knew what she had done was wrong but she was dealing with a lot of personal problems. When Bishop met with the claimant on October 29, the claimant admitted she had drinks over lunch on October 26. Bishop discharged the claimant for violating the employer's policy prohibiting employees from being impaired by intoxicants in the workplace.

The claimant filed for and received unemployment insurance benefits for the weeks between December 26, 2010, and February 26, 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).

The findings of fact show how I resolved the factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. If the claimant had participated, my findings might have been different; because if the only indication of impairment was the smell of alcohol and the claimant credibly testified that she had consumed one glass of wine a few hours before reporting to work, I would have been hard pressed to find the claimant was impaired at work. But, the claimant did not participate, and the evidence that several school employees smelled the odor of alcohol on the claimant's breath, the claimant admitted that she knew what she did was wrong, and she never argued that she was not impaired, is enough to support a finding that the claimant was impaired at work in violation of the employer's work rule.

The claimant's violation of a known work rule was 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 § 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 January 24, 2011, 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