

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARNELA R MAHALBASIC

Claimant

APPEAL NO: 14A-UI-05995-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCED DRAINAGE SYSTEMS INC

Employer

OC: 05/04/14

Claimant: Respondent (2)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits
871 IAC 24.10 – Employer Participation

STATEMENT OF THE CASE:

Advanced Drainage Systems, Inc. (employer) appealed a representative's May 21, 2014 (reference 01) decision that concluded Arnela R. Mahalbasic (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known address of record, a telephone hearing was held on July 3, 2014. A review of the Appeals Section's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Brian Hill appeared on the employer's behalf and presented testimony from two other witnesses, Tim Liddle and Lisa Simmons. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits, and if so, is that overpayment subject to recovery based upon whether the employer participated in the fact-finding interview?

OUTCOME:

Reversed. Benefits denied. Overpayment subject to recovery.

FINDINGS OF FACT:

The claimant started working for the employer on December 1, 2013. She worked full time as a sorter on the 3:30 p.m. to 1:00 a.m. shift. Her last day of work was the shift on the evening of April 29, 2014. The employer sent her home and suspended her as of that evening, and discharged her on May 5, 2014. The stated reason for the discharge was repeated violation of the employer's anti-harassment and anti-bullying policies.

The claimant had previously been given a verbal warning regarding her abusive language toward other employees in about early April 2014. On the evening of April 29, shortly before the first break, the claimant began making statements that she was “tired of the crap” going on on the line, tired of another employee thinking she was in charge, saying she was going to hit that coworker in the face, saying that all of the coworkers were “two-faced b - - -es” and that she was going to hit them all in the face, and that she was going to “kick someone’s a - -.” As a result of this incident the claimant was first sent home for the remainder of the shift and suspended, and then discharged.

The claimant established a claim for unemployment insurance benefits effective May 4, 2014. A fact-finding interview was held with a Claims representative on May 20, 2014. The employer, through an Amber Gils and a Jeremy Magly, participated directly in the fact-finding interview. The claimant has received unemployment insurance benefits after the separation in the amount of \$2,144.00.

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 which was a material breach of the duties and obligations owed by the employee to the employer. Rule 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. Rule 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. Rule 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 making of harassing and threatening statements towards coworkers, particularly after being warned, 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. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault.

However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a,--b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's May 21, 2014 (reference 01) decision is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of April 29, 2014. 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 is not subject to charge. The claimant is overpaid \$2,144.00, which is subject to recovery.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/can