

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEAGAN C MORGAN
Claimant

APPEAL NO. 13A-UI-11753-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REGIS CORP
Employer

OC: 09/01/13
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 October 4, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was originally scheduled for November 13, 2013, but was rescheduled at the claimant's request to November 26, 2013. The hearing was held on November 26, 2013. The parties were properly notified about the hearing. The claimant failed to participate in the hearing because she was unavailable at the number the Appeals Bureau had for her. David Moehle participated in the hearing on behalf of the employer with witnesses, Colleen Schuring, Jenny Wright, and Shawn Frederick.

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 stylist from March 16, 2012, to August 27, 2013. She was informed and understood that under the employer's work rules, she was only to use the employer's products and services with approval of a supervisor and when it would not interfere with daily business.

On August 27, 2013, the claimant gave herself a perm while she was working alone in the salon. A customer came in the salon to get a haircut for her son. The claimant continued to give herself a perm and ignored the customer. The customer stayed for a while and then left the salon when it was obvious that the claimant was not going to wait on her.

The claimant filed for and received a total of \$1,116 in unemployment insurance benefits for the weeks between September 9 and October 10, 2013.

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 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 generally 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. But a claimant is not required 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 \$1,116 in benefits.

The matter of deciding whether the claimant is required to repay the overpayment and whether the employer's account remains subject to charge for the overpaid benefits based on the employer's participation in the fact-finding interview is remanded to the Agency.

DECISION:

The unemployment insurance decision dated October 4, 2013, 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 claimant was overpaid \$1,116 in benefits. The matter of deciding whether the claimant is required to repay the overpayment and whether the employer's account remains subject to charge for the overpaid benefits is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs