

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALLYSON I MULLESCH**  
Claimant

**APPEAL NO. 12A-UI-12373-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LUTHERAN SERVICES IN IOWA INC**  
Employer

**OC: 09/23/12**  
**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 11, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 8, 2012. The parties were properly notified about the hearing. The claimant failed to provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Ashley Folley participated in the hearing on behalf of the employer with a witness, Ashely Iserman.

**ISSUES:**

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked full-time as a youth specialist from February 7, 2011, to September 25, 2012. She worked in a group care setting with troubled children.

On September 25, the claimant violated policy and the training she had received by slapping a 16-year-old client who had been acting aggressively. The claimant was informed and understood that under the employer's work rules, striking a child was never an appropriate way of handling a child.

On September 25, the employer discharged the claimant for willfully violating the employer's policies. She was given the option to resign, but the reason for the separation was the employer's decision to terminate her.

The claimant filed for and received a total of \$1226 in unemployment insurance benefits for the weeks between September 23 and November 3, 2012.

After the hearing had concluded, the claimant called the Appeals Section at 2:19 p.m. and admitted she had not followed the instructions on the hearing notice that required her to call in and provide her telephone number.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue is whether the hearing should be reopened.

871 IAC 26.14(7)(b) and (c) provide:

(b) If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the administrative law judge shall not take the evidence of the late party. Instead, the administrative law judge shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the administrative law judge shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the administrative law judge does not find good cause for the party's late response to the notice of hearing.

(c) Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The claimant failed to provide a telephone number at which she could be reached for the hearing as the hearing notice requires. Good cause for reopening the hearing has not been shown.

The next issue is how to treat a quit in lieu of being discharged for unemployment insurance purposes.

Under the unemployment insurance law, a claimant is disqualified from receiving unemployment insurance benefits if the claimant voluntarily quit employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a. A claimant who is compelled to resign when given the choice of resigning or being discharged is not considered to have voluntarily quit. 871 IAC 24.26(21). A termination of employment initiated by the employer for work-conduct issues is a discharge for unemployment insurance purposes. See 871 IAC 24.1(113)c. The reasons for the discharge must be evaluated under the misconduct standard to decide whether the claimant should be awarded or denied benefits.

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 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 October 11, 2012, 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 § 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw