

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LESLIE R ROBERTS
Claimant

APPEAL NO. 10A-UI-01600-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**FIRST ADVANTAGE
MEMBERSHIP SERVICES INC**
Employer

**Original Claim: 12/27/09
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 22, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 10, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Ross Gardner, attorney at law, participated in the hearing on behalf of the employer with witnesses, Chad Bennett and Michelle Tredway.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a customer service supervisor from September 17, 2007, to December 30, 2009. She was informed and understood that under the employer's work rules, social media postings were not to disclose company confidential or proprietary information (including information about company policies that have not been made public) and do not publically disagree with company policies (instead, issues were to be brought to management).

The claimant was issued a final warning on October 28, 2009, for unprofessional and rude conduct toward co-workers and supervisors.

On December 22, the claimant deliberately violated the employer's policy by posting the following comment on her Facebook page: "How do you get up and go to a job who makes you work late on Christmas Eve, New Year's Eve, shorts your last 3 checks, takes away your day off because you already have Christmas day off and says We hope all of our employees have a Merry Christmas. Yes, we were going to have to stay until midnight, but low and behold they are going to be kind and let us off at 9:00 a.m. those days."

The claimant had made several employees, including her supervisor, friends on her Facebook page, which meant that they—along with all of her other Facebook friends—would get notice of the comments she posted. Her supervisor, Michelle Tredway, read the comment she posted and warned her about posting such comments.

On December 24, the claimant again posted a comment stating: “Well here I am getting up and going into a job that says Merry Christmas to you by docking your pay almost \$350.00 and still making you work until 8 p.m. Hell of a way to say Merry Christmas.”

Management became aware of the second posting and discharged the claimant on December 30, 2009, for posting negative comments about the employer on her Facebook page.

The claimant filed for and received a total of \$2,618.00 in unemployment insurance benefits for the weeks between December 27, 2009, and March 13, 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 § 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 disputed 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. I believe the claimant posted the December 24 comments after being warned. Even if she had not been warned, I would conclude she willfully violated work rules and the standards of behavior the employer had the right to expect of her because she very publicly disagreed with the employer’s policies and painted the employer in a bad light. Pretty much anyone who received the comments would have known they referred to the employer. Work-connected misconduct 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 22, 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 § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw