

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SHYLA D MIXON**  
Claimant

**ABRH LLC**  
Employer

**APPEAL 17A-UI-05988-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/30/17**  
**Claimant: Respondent (4R)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the June 1, 2017, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 26, 2017. Claimant did not participate. Employer participated through hearing representative Craig Cree and operations director Mike Halepis. Official notice was taken of the administrative record, including claimant's benefit payment history, claimant's wage history, and the fact-finding documents, with no objection.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a server at the employer's West Des Moines location from February 26, 2017, and was separated from employment on March 3, 2017, when she was discharged.

Prior to February 26, 2017, claimant had previously worked for the employer at its Johnston, Iowa, location. In 2017, Mr. Halepis discharged claimant from employment at the Johnston location. After claimant was discharged from the Johnston location, she applied and was hired by the employer on February 26, 2017 at its West Des Moines, Iowa, location.

On March 3, 2017, Mr. Halepis discovered that claimant was working for the employer at its West Des Moines location. Mr. Halepis asked the general manager at the West Des Moines

location if claimant had disclosed to the employer that she had previously worked for the employer. The general manager told Mr. Halepis that claimant had not disclosed that she had previously worked for the employer. Mr. Halepis then reviewed claimant's employment application for this location (West Des Moines) and discovered that she did not disclose that she had previously worked for the employer. The application has a specific question that asks the applicant if they are a previous employee of the employer. On claimant's application, she selected that she was not a previous employee of the employer. Mr. Halepis also reviewed claimant's previous employment history listed on her application. Mr. Halepis discovered that claimant did not disclose her prior employment with the employer in her previous employment history. At the end of the application, claimant verified/confirmed that all of the information on the application was accurate. Claimant's separation from the Johnston location precluded her from being hired at the West Des Moines location. After Mr. Halepis reviewed claimant's job application he sat down with her. Claimant acknowledged to Mr. Halepis that she knew who he was and that he had discharged her from the Johnston location. Claimant also acknowledged to Mr. Halepis that she did not disclose to the employer that she had previously worked at the employer. Mr. Halepis then discharged claimant. Claimant was discharged because she had just been previously discharged from the employer for misconduct at a different location and she falsified her application.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$608.00, since filing a claim with an effective date of April 30, 2017, for the eight weeks ending June 24, 2017. The administrative record also establishes that the employer did participate in the fact-finding interview. The administrative record reflects that claimant has not requalified for benefits and had other base period wages (including wages with this employer during a prior period of employment) but the record is unclear as to whether she is otherwise monetarily eligible.

Claimant had two periods of employment with this employer. The first period of employment occurred prior to February 26, 2017. The second period of employment occurred from February 26, 2017 to March 3, 2017. The administrative record reflects that a determination has not been made on claimant's first separation for this employer that occurred prior to February 26, 2017.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related misconduct, but has not requalified and the record is unclear as to whether claimant is otherwise monetarily eligible after removal of these wage credits from this employer for her employment from February 26, 2017 through March 3, 2017.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. *Discharge for misconduct.* If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

## **Discharge for misconduct.**

### *(1) Definition.*

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

When claimant applied to work for the employer at the West Des Moines location she did not disclose that she had previously work for the employer at the Johnston location. Furthermore, claimant indicated on her application that the information she provided was accurate. Mr. Halepis credibly testified that claimant's prior separation from the Johnston location would have precluded her from being hired at the West Des Moines location if she would have disclosed her prior employment with the employer.

The employer has presented substantial and credible evidence that claimant falsified her job application when she applied to work for the employer at its West Des Moines location. This is misconduct without prior warning or specific policy violation.

Inasmuch as claimant was discharged for misconduct and her separation is disqualifying. Claimant has not requalified for benefits since the separation but may be otherwise monetarily eligible according to base period wages after her wages from her period of employment with this employer from February 26, 2017 through March 3, 2017 are removed.

## **DECISION:**

The June 1, 2017, (reference 02) unemployment insurance decision is modified in favor of the appellant. Claimant was discharged from employment due to job-related misconduct and has not requalified for benefits but may be otherwise monetarily eligible. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account (ABRH LLC, employer

account number 534880-000) shall not be charged for her period of employment with this employer from February 26, 2017 through March 3, 2017.

**REMAND:** Claimant's monetary eligibility after the discharge of this part-time employment (ABRH LLC, employer account number 534880-000) for the period of employment from February 26, 2017 through March 3, 2017 as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination. Claimant's first separation (prior to February 26, 2017) from this employer as delineated in the findings of fact is also remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs