

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARTHA BROWER
Claimant

APPEAL NO: 07A-UI-06675-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STAFFCO OUTSOURCE MANAGEMENT
Employer

**OC: 12/03/06 R: 04
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Staffco Outsource Management (employer) appealed an unemployment insurance decision dated June 29, 2007, reference 01, which held that Martha Brower (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 25, 2007. The claimant participated in the hearing. The employer participated through Theresa Jacobs, Human Resources Coordinator. Employer's Exhibits One and Two were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time production bailer from April 9, 2007 through June 11, 2007. She was discharged from employment due to violation of the attendance policy and refusal to work mandatory overtime. At the time of hire, the claimant was advised that mandatory overtime was possible dependent upon production needs. However, the last year only required one instance of mandatory overtime. The employer's attendance policy provides that employees are discharged once they receive nine attendance points. They are assessed a half point for missing four hours and one point for missing eight hours. No-call/no-shows are not tolerated and employees are assessed four and one half points for each.

Production needs were up and the employer required mandatory overtime for the weekend of May 26, 2007. Employees could pick which day they wanted to work. The claimant refused to work that weekend because it was a holiday weekend and she had been looking forward to it but did not call to report her absence. The claimant received and signed a warning on June 1, 2007 for a no-call/no-show on May 27, 2007. Mandatory overtime was again expected on

June 2, 2007 and again the claimant failed to call or report to work. A second warning was issued to her on June 4, 2007. She had accumulated nine attendance points by that time and could have been discharged but the employer gave her a break. Mandatory overtime was required for the following weekend but the claimant informed her supervisor on June 7, 2007 that she was not going to work and was not going to call in. She did not work on June 9, 2007 and was discharged on the following Monday when she returned to work.

The claimant filed a claim for unemployment insurance benefits effective December 3, 2006 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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 section 96.5-2-a.

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.

871 IAC 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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged from employment due to violation of the attendance policy and refusal to work mandatory overtime. She denies knowing

that mandatory overtime would be required but the employer testified the claimant was informed of that fact at the time of hire. It is unlikely that the employer would have failed to mention this fact to a new employee but regardless, any reasonable person would know that a production job would likely involve mandatory overtime. The claimant's refusal to work mandatory overtime resulted in accumulating excessive attendance points. However, it was very clear she never intended to work overtime. Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of her employer. Myers v. IDJS, 373 N.W.2d 507 (Iowa 1983). Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated June 29, 2007, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,004.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs