

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RONIJO TEMPLEMAN**  
Claimant

**APPEAL NO: 11A-UI-09021-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 05/29/11**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Care Initiatives (employer) appealed an unemployment insurance decision dated June 29, 2011, reference 03, which held that Ronijo Templeman (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 August 2, 2011. The claimant participated in the hearing. The employer participated through Loretta Sloff, Administrator; Nancy Savage, Dietary Supervisor; Francis Van Unen, Dietary Aide; David Williams, Employer Representative. 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 claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**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 part-time cook from August 25, 2010 through May 31, 2011. She was discharged for refusing to follow safety protocols. The claimant cooked a 15-pound meat roast in the roaster on May 28, 2011 but she forgot about it and left it out all night.

On the following morning, dietary aide Francis Van Unen discovered the meat sitting in the roaster with it turned off. Ms. Van Unen told the claimant and the claimant asked her what they should do about it. Ms. Van Unen told the claimant to call the supervisor but the claimant chose not to do that and said she was going to serve it. The claimant added broth to the roast and served it to the elderly residents. She had taken the proper training and knew what was required to ensure the meat she prepared was safe.

The claimant had been previously warned when she left out a cooked turkey roast; fortunately someone else discovered it and put it away. The employer discharged the claimant on May 31, 2011 after meeting with her.

The claimant filed a claim for unemployment insurance benefits effective June 29, 2011 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 § 96.5-2-a.

Iowa Code § 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 employer discharged the claimant on May 31, 2011 for refusing to follow safety protocols and serving elderly residents meat that was unsafe. She admits the roast was in the roaster all night but she contends it was left on and continued to cook but the evidence does not support that contention. A co-employee testified she found the

meat in the roaster on the morning of May 29, 2011 and it was turned off. Furthermore, the supervisor said that if the roast had cooked all night, it would have been burnt.

The claimant's actions were dangerous to the elderly residents and any reasonable person would know that the meat that was left out all night should not have been served. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated June 29, 2011, reference 03, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs