

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUSAN L SCHUSTER**  
Claimant

**APPEAL NO. 09A-UI-03185-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RASTRELLIS INC**  
Employer

**OC: 01/25/09**  
**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 25, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 24, 2009. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Diane Miller and Michael Rastrelli participated in the hearing on behalf of the employer. Exhibits One, Two, and Three were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?  
Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked for the employer as a waitress and banquet server from March 26, 2008, to December 29, 2008. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer and find their own replacement if they were not able to work as scheduled.

The claimant was absent without notifying the employer or getting a replacement on May 10, 2008. She called in sick on May 16 but did not find her own replacement. She received a warning for these absences when she reported for her next shift.

The claimant was late for work on December 2 and 4. On December 14 the claimant called and stated she could not work that day. She did not find her own replacement in violation of the employer's policies. She received another warning for failing to line up her own replacement on December 15. She was late for work on December 20 and 29.

On December 30, the claimant called and said her son was sick and she was not able to work. She was given phone numbers to call to find a replacement. She called back later and said she could not find anyone to work for her. She did not report to work.

The claimant was absent from work without notice on December 31. The house manager spoke with the claimant on January 2, 2009, and informed her that she was discharged for tardiness, failure to report for her scheduled shifts, and failure to find her own replacement.

The claimant filed for and received a total of \$1,288.00 in unemployment insurance benefits.

**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 section 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 claimant's violation of a known work rule on December 31, 2008, when she was absent without notice to the employer 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. She had been warned before about missing work without notice and about failing to line up her own replacement. 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated January 25, 2009, 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 determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 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/pjs