

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRYSTAL L RAGAN**  
Claimant

**APPEAL NO. 13A-UI-07893-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE BON-TON DEPARTMENT STORES INC**  
Employer

**OC: 06/02/13**  
**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 June 26, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 12, 2013. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Bryan Schell participated in the hearing on behalf of the employer. Exhibits 1 through 3 were admitted into evidence at the hearing.

**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 shoe-selling supervisor from May 4, 2012, to June 4, 2013. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination if they reached eight attendance points. One point is assessed for absences and a half point is assessed for lateness or leaving work early. The claimant received warnings on March 16 and March 24 for her attendance deficiencies. The March 24 warning was a final corrective warning and was after the claimant was absent without notice on March 22.

After receiving the March 24 warning, the claimant was late on March 25 (29 minutes), March 26 (16 minutes), March 30 (23 minutes), April 3 (26 minutes), April 4 (16 minutes), April 11 (77 minutes), April 16 (6 minutes), April 23 (16 minutes), May 7 (42 minutes), May 11 (15 minutes), May 12 (26 minutes), and May 16 (8 minutes). She was absent on April 13 and May 10.

When the claimant was late on May 16, she had eight attendance points. The store manager reviewed the claimant's attendance record, the matter was submitted to human resources to make sure the attendance points were correct and a recommendation for action. While this was taking place, the claimant was absent from work on May 26 and 30. The claimant would have been discharged even without these absences. The claimant was discharged for excessive unexcused absenteeism on June 4, 2013.

The claimant filed for and received a total of \$2,498.00 in unemployment insurance benefits for the weeks between June 2 and August 10, 2013.

### **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 unemployment insurance rules provide: "Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer." 871 IAC 24.32(7).

The claimant's attendance record shows the claimant was repeatedly late for work despite repeated warnings about her attendance deficiencies. She knew her job was on the line, but continued to report substantially late for work, up to 77 minutes late in one instance. This means the definition of excessive unexcused absenteeism under 871 IAC 24.32(7).

871 IAC 24.32(8) provides: "While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act." 871 IAC 24.32(7). The evidence establishes that the claimant was to be discharged after the employer discovered she had reached eight attendance points. The store manager had a reasonable explanation for why the discharge did not take place until June 4. The claimant was discharged for a current act of misconduct.

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 June 26, 2013, 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.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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