

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SANDRA I ESPINOZA-SILVA**  
Claimant

**APPEAL NO. 12A-UI-02004-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**  
Employer

**OC: 01/22/12  
Claimant: Respondent (4)**

Section 96.5-2-a – Suspension  
871 IAC 23.4 – Back Pay

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated February 23, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 15, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Philip Miller, attorney at law. Sarah James participated in the hearing on behalf of the employer. The record was left open for the employer to submit documents to show the back pay the claimant received. The claimant's attorney had no object to the documents, which were admitted into evidence as Exhibit One.

**ISSUES:**

Was the claimant suspended for work-connected misconduct?  
Did the claimant receive back pay for weeks in which she received unemployment insurance benefits?  
Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked from October 13, 2008, to January 9, 2012. She was suspended effective January 10, 2012, because of an allegation of harassment and lack of candor due to the investigation.

The claimant filed a new claim for unemployment insurance benefits effective January 22, 2012, and filed for and received \$473.00 per week in benefits for the five weeks between January 22 and February 25, 2012.

The employer reinstated the claimant in her job on March 2, 2012, and paid her back pay for all the time she was off work except for January 11 and 12. The claimant was paid \$648.00 per week for the seven weeks from January 13 through March 1, 2012.

## 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 or suspended 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 employer has the burden to prove the claimant was discharged or suspended 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). In this case, the employer did not prove by the preponderance of the evidence that the claimant's suspension was for work-connected misconduct.

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 division of job service 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 division a sum equal to the overpayment.

If the division 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.

871 IAC 23.4 provides that a payment for back pay is taxable to an employer and recoverable from a claimant who receives back pay for a period for which she has also received benefits.

The claimant is considered overpaid \$473.00 per week in benefits for the five weeks between January 22 and February 25, 2012, which she must repay to the Agency.

**DECISION:**

The unemployment insurance decision dated February 23, 2012, reference 01, is modified. The claimant is qualified to receive unemployment insurance benefits based on the reasons for her separation from work. She was, however, overpaid \$473.00 per week in benefits for the five weeks between January 22 and February 25, 2012 due to the receipt of back pay, which she must repay to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs