

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

IRMA ZIMMERMAN
Claimant

APPEAL NO. 20A-UI-05267-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRK WILLIAMS INC
Employer

OC: 04/05/20
Claimant: Respondent (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 26, 2020, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 30, 2020. Employer participated by Tyler Jentz and Cindy Leitheiser. Claimant failed to respond to the hearing notice and did not participate. Employer's exhibits 1-14 were admitted into evidence.

ISSUES:

Whether claimant was discharged for misconduct?

Whether claimant was overpaid benefits?

Whether claimant is eligible for FPUC benefits?

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on November 19, 2019. Employer discharged claimant on November 19, 2019 because claimant continually missed scheduled meetings after numerous warnings and a performance improvement plan were given to claimant.

Employer hired claimant in September 2019 to serve as a medical support supervisor for employer. Throughout claimant's employment, she had numerous difficulties with documentation and organization. Employer raised concerns to claimant on multiple occasions.

Claimant was issued a formal Performance improvement plan which detailed numerous meetings missed by claimant and numerous documentation errors on November 12, 2019. Claimant was warned this type of activity could not continue. The same day employer sent claimant notice through text, email, and on Google calendar for a 10:00 meeting to be held on November 15, 2019.

At 9:54am claimant texted her supervisor that she was on the other side of town and would be late for the meeting. At 10:25 claimant arrived at the house where the meeting was being held, but went to her office rather than participating in the meeting. Claimant was terminated on November 19 for ongoing problems with meeting attendance after warning.

The administrative law judge took notice that claimant has not received state unemployment benefits in this matter and has not received Federal Pandemic Unemployment Compensation benefits in this matter.

Employer did substantially participate in fact finding in this matter by participating in the phone interview.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning missing scheduled meetings. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant knew employer's concerns about attending meetings and knew she needed to improve her attendance or her job would be at risk, but did not attend the next meeting and offered no excuse for not attending. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

The overpayment issue was addressed. Claimant has received no benefits to date, so claimant has not been overpaid.

The issue of employer participation was addressed. Employer did substantially participate in fact finding.

Note to Claimant: Even though claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The decision of the representative dated May 26, 2020, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

July 13, 2020
Decision Dated and Mailed

bab/mh