

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENISE TEMPLE
Claimant

APPEAL NO: 13A-UI-04918-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RRL OTTUMWA LLC
c/o **THOMAS AND THORNGREN**
Employer

OC: 03/31/13
Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

RRL Ottumwa (employer) appealed an unemployment insurance decision dated April 18, 2013, reference 01, which held that Denise Temple (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 July 22, 2013 before Administrative Law Judge Julie Elder but it could not be completed. The claimant and Director of Human Resources Angie Miller participated in the hearing. Employer's Exhibit One was admitted into evidence. Employee witnesses Amanda Conrad, Eleanor Arnold, Teresa Bengel, Laura Kurimski, Michelle Stump and LuAnn Quinn were present for the first part of the hearing but did not provide testimony. Before the hearing could be rescheduled, Judge Elder went on an indefinite leave of absence.

The case was re-assigned to Administrative Law Judge Susan Ackerman per direction from lead worker Administrative Law Judge Teresa Hillary. After due notice was issued, the hearing was held and completed on September 19, 2013. The claimant participated personally. The employer participated through Human Resources Manager Becky Helwig, Dietary Manager Teresa Bengel, Business Office Manager Laura Kurimski, Environmental Services Manager LuAnn Quinn and Marketing Manager Michelle Stump.

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 full-time executive director from October 29, 2012 through March 28, 2013. She was suspended for two days and placed on a final warning on February 27, 2013. The claimant was discharged on March 28, 2013 for insubordination after she disobeyed a directive to keep the information about layoffs

confidential. The claimant attended a meeting on Monday, March 18, 2013 during which the Chief Financial Officer Phil Dionne instructed her and the other directors that layoffs would occur at the end of the week. Although the claimant testified in both parts of the hearing that she did not remember Mr. Dionne instructing her not to share the information, she did admit that she told the fact finder that the "CEO said it was confidential and if it got leaked out, then to let him know and he would take care of it." The claimant also confirmed this information during the hearing.

The claimant sent an email to her managers on March 18, 2013 advising them there was a mandatory meeting on March 19, 2013 at 10:00 a.m. During the meeting on Tuesday morning, the claimant informed her managers that there were going to be layoffs that week. The claimant testified that the purpose for telling her managers about the layoffs was to prepare them to cover for any employees that might be laid off. At least three of the eight managers she told about the layoffs did not have any employees they supervised. Marketing Manager Michelle Stump specifically asked the claimant if the fact that they were being told about the layoffs meant that their jobs were safe and the claimant stated no. The claimant told her managers she did not know who was going to be laid off but during the hearing she testified she was given a list of employees at the meeting and the names that were highlighted on the list, were the employees who would lose their jobs. Director of Human Resources Angie Miller testified the claimant shared the information not for informational purposes but to create intimidation and panic.

The claimant testified that she met with her management team within a half hour of attending the leadership team meeting but the employer witnesses confirm the management team was notified that day about a mandatory meeting the next morning. The claimant admitted she told the fact finder that her managers already knew about the layoffs prior to her disclosing the information on March 19, 2013 but it was clarified in the hearing that only two managers may have known this information prior to the meeting.

The final written warning resulted from the claimant, "creating a hostile work environment by berating and intimidating your staff. You threaten their jobs." There were repeated verbal warnings prior to the suspension and final written warning. The claimant admitted that Supervisor Dan Porter did have conversations with her on the days listed on the final warning but denies that he told her specifically what the complaints about her were. During the hearing, the employer witnesses testified to several examples of abusive and intimidating behavior by the claimant. While she denied the behavior was abusive and intimidating, she confirmed the facts supporting the claims. However, the claimant testified she was not discharged for the issues listed in the final warning.

The claimant filed a claim for unemployment insurance benefits effective March 31, 2013 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 she was discharged for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

The claimant was discharged for insubordination on March 28, 2013 after she was placed on a final warning. The evidence confirms she was directed not to share the information about

employee layoffs and did so anyway. Her explanation that she had to tell her managers to prepare them to cover for any employees who might be laid off is not valid. First of all, managers are always responsible for covering for their employees but more importantly, several of her managers did not have employees in their departments that would need to be covered. The sharing of this information only served to upset the managers, particularly when the claimant denied knowing whether any of their jobs were going to be included in the layoffs. The claimant's insubordination was a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated April 18, 2013, reference 01, 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs