

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

REBECCA S EBENSBERGER
Claimant

APPEAL NO. 14A-UI-10744-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 09/07/14
Claimant: Respondent (2)

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 October 6, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 4, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Elizabeth Willis participated in the hearing on behalf of the employer with witnesses, Lori Ceselski, Tammy Young, and Jessica Evans.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?
Is the employer subject to charge for benefits paid?

FINDINGS OF FACT:

The claimant worked full time for the employer as a store employee from August 22, 2012, to May 8, 2014. Elizabeth Willis is the store manager.

She was informed and understood that under the employer's work rules, employees were required to notify the employer four hours before the start of their shift and find their own replacement if they were not able to work as scheduled. The claimant had received discipline in the past for excessive absenteeism and failure to follow the call-in procedures. She received a written warning on January 22, 2014, for failing to follow the notification and replacement procedures on January 17, 21, and 22.

The claimant was scheduled to work 6 a.m. to 2 p.m. on May 10 and 11. She was absent due to illness and did not call in to report her absence. When the claimant would not answer her phone, Willis sent the claimant a text message at about 6:45 a.m. stating that she took it that the claimant was not working. She told the claimant that if she did not hear from the claimant, she

would assume she was quitting. At about 11:19, the claimant responded, "What." When Willis replied that she was a no-call/no-show for the 6 a.m. to 2 p.m. shift, the claimant's response was, "Really."

Willis suggested that she would need to take vacation to cover the time missed, not let it happen again, and work the 2 to 10 p.m. shift. She was told that she would need to follow her schedule in the future. The claimant told Willis that she did not feel well and could not work the 2 to 10 p.m. shift. Willis replied, "It is what it is."

The claimant was absent from work without notice or a replacement for her 6 a.m. to 2 p.m. shift on May 11. Although she asserted that she thought she had been fired, there is no evidence to support this.

On May 12, 2014, Willis discharged the claimant for her no-call/no-shows on May 10 and 11.

The claimant filed for and received a total of \$1,286 in unemployment insurance benefits for the weeks between September 7 and November 8, 2014. The employer participated and presented information about the claimant's discharge at the fact-finding interview.

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 violation of a notification and replacement policies on May 10 and 11 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law generally 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. But a claimant is not required 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 claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$1,286 in benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer's account will not be charged for benefits.

DECISION:

The unemployment insurance decision dated October 6, 2014, 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 claimant was overpaid \$1,286 in benefits, which she must repay.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs