

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRYSTAL A RETTINGHAUS
Claimant

APPEAL NO. 08A-UI-04339-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS DAIRY INC
Employer

OC: 04/06/08 R: 01
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated April 28, 2008, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 20, 2008. Although duly notified, the claimant did not respond to the hearing notice and did not participate. The employer participated by Josh Burrows, Representative, and Witnesses Rick Meyer and Gary Lovell. Employer's Exhibits One and Two were received into evidence.

ISSUE:

The issues in this matter are whether the claimant was discharged for misconduct in connection with her work and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from May 2, 2005 until April 8, 2008 when she was discharged from employment for sleeping on the job. Ms. Rettinghaus worked as an assistant machine operator on a full-time basis and was paid by the hour. Her immediate supervisor was Rick Meyer.

The claimant was discharged after she was personally observed by her supervisor intentionally sleeping on the job. Employees assigned to the production line where Ms. Rettinghaus was working were required to perform other duties at the time. Based upon a report from another employee, Mr. Meyer observed the claimant and found her sleeping in an area that she had specially prepared for sleeping and was hidden from view. After Mr. Meyer was sure that the claimant was in fact sleeping, he woke the claimant. The claimant had no explanation for her conduct except to state, "She had nothing else to do." Ms. Rettinghaus was aware that sleeping on the job was an offense that would result in her immediate termination from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the claimant was discharged under disqualifying conditions. It does. The evidence in the record establishes that the claimant intentionally placed herself in a situation where she would fall asleep while other company employees were performing the duties assigned to them by their employer. Based upon information provided by another employee, the claimant's immediate supervisor personally observed the claimant sleeping in an area that she prepared out of view from other workers. The claimant was aware that the employer expected her to perform secondary duties at the time, however, the claimant chose not to do so. Ms. Rettinghaus was aware that sleeping on the job would result in her termination from employment.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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.

For the reasons stated herein, the administrative law judge concludes the claimant was discharged under disqualifying conditions.

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 department 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 department a sum equal to the overpayment.

If the department 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$694.00.

DECISION:

The representative's decision dated April 28, 2008, reference 01, is hereby reversed. The claimant was discharged for misconduct in connection with her work. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided that she is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$694.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs