

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIFFANY L LOGSDON

Claimant

APPEAL NO. 10A-UI-13267-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

OC: 08/15/10

Claimant: Respondent (2-R)

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 September 15, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 12, 2010. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Jessica Sheppard participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked as a production worker for the employer from September 17, 2009, to August 2, 2010. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to discharge if they received 10 attendance points.

The claimant received a verbal warning on February 2, 2010, because she had 5 attendance points. She received a written warning on June 25 due to being at 10 attendance points. Since part of the points were due to the funeral of a family member, she was allowed to submit documentation for funeral leave. Not all the days leading up to this warning were due to funeral leave.

On July 9, 2010, the claimant was placed on a last chance agreement due to her excessive absenteeism. She agreed that she would not accumulate anymore points before January 2011.

The claimant had been given permission from her supervisor to leave work early on July 30, 2010, for a court appearance but it was conditioned on her coming to work before the court appearance.

Instead of reporting to work as she had agreed to do on July 30, the claimant called in on the morning of the court appearance and stated that she was going to be absent for personal reasons. She was discharged when she reported to work on August 2, 2010, for willful violation of her last chance agreement and her excessive absenteeism. The claimant's absences were due to a combination of absences due to illness and personal reasons and included instance when she failed to properly notify the employer about an absent.

The claimant filed for and received a total of \$3,672.00 in unemployment insurance benefits for the weeks between August 15 and November 6, 2010.

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 section 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 claimant's willful violation of the terms of the last chance agreement 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 requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated September 15, 2010, 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 matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs