

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAY L WARD
Claimant

APPEAL NO. 13A-UI-10065-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 08/04/13
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 August 26, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 1, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Debra Brown participated in the hearing on behalf of the employer. Exhibits One through Three were 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 part time for the employer as a pizza maker from November 5, 2012, to July 12, 2013. She was informed and understood that under the employer's work rules, employees who were not working were not to be in employee-only areas, such in the kitchen or behind the counter, and employees were not to engage in harassing conduct.

On July 6, 2013, the claimant came into the store as a customer to buy something. She was intoxicated. She went behind the front counter and came up behind a female employee and put her arms around the employee, touching the employee's breasts, and hugged her. The conduct was unwelcome and made the employee uncomfortable. She also was in the kitchen area where she took a knife from an employee and pushed up against an employee in a way that made that employee uncomfortable also.

A customer in the store witnessed the claimant's conduct and complained to the store manager about her actions. The employees also complained to the store manager on July 8, 2013. After confirming the complaints by watching surveillance video, the store manager discharged the claimant on July 12, 2012, for her physical contact with employees and being in employee-only areas when she was not working.

The claimant filed for and received a total of \$1,136 in unemployment insurance benefits for the weeks between August 4 and September 28, 2013.

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 claimant's violation of known work rules 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. The fact that the claimant was intoxicated at the time does not excuse her conduct. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

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. But 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 claimant received benefits but has been denied benefits as a result of this decision. She, therefore, was overpaid benefits. 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 August 26, 2013, 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 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.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css