

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOELLA K FOGLEMAN
Claimant

APPEAL NO. 14A-UI-02206-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TMONE LLC
Employer

OC: 01/12/14
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment of Benefits
871 IAC r. 24(10) – Employer Charge

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated February 21, 2014, reference 02, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on April 2, 2014, by telephone conference call. The claimant failed to respond to the hearing notice and did not participate. Employer participated by Lindsey Sinn, Employee Connections Manager, and Tiffany McMorran, Supervisor. The record consists of the testimony of Lindsey Sinn; the testimony of Tiffany McMorran, Supervisor, and Employer's Exhibits 1-5.

ISSUES:

Whether the claimant was discharged for misconduct;

Whether the claimant has been overpaid unemployment insurance benefits;

Whether the claimant is required to repay those benefits; and

Whether the employer's account should be charged.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a call center. The claimant was hired on August 9, 2013, as a full-time telephone account manager. Her last day of work was December 4, 2013. She was terminated on December 4, 2013.

The incident that led to the claimant's termination occurred on December 2, 2013. The claimant dialed a customer's number ten times. When the customer answered, the claimant hung up the call. This action by the claimant violated the employer's work rules. The claimant had received

a final written warning about this same behavior, call avoidance, on November 21, 2013. The claimant would not answer calls when they came in. If the claimant did answer, she would not say anything and wait for the customer to disconnect. The claimant knew her job was in jeopardy. She also received warnings on November 7, 2013, and November 11, 2013.

The claimant established an original claim for benefits with an original claim date of January 12, 2014. She received benefits from the week ending January 18, 2014, through the week ending March 29, 2014 in the amount of \$176.00 per week. The employer participated in fact finding.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that leads to termination occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990) The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The evidence is overwhelming that the claimant engaged in persistent conduct that was an ongoing violation of the employer's work rules. She did not take calls that came in to the call center. Her job was to answer these calls. She would call prospective customers and wait for the customer to

disconnect the call without speaking to that customer. She was warned and suspended because of this conduct and yet it persisted to the final incident on December 2, 2014. The claimant knew her job was in jeopardy. The claimant engaged in insubordination, which is misconduct. 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 section 96.3-7-a, b.

The claimant received benefit but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

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

DECISION:

The decision of the representative dated February 21, 2014, reference 02, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The claimant was overpaid unemployment insurance benefits. The claimant must repay those benefits. The employer's account (534063) shall not be charged.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css