

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELIZABET AGUIRRE**  
Claimant

**APPEAL NO. 13A-UI-13641-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REMBRANDT ENTERPRISES INC**  
Employer

**OC: 01/06/13**  
**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 December 6, 2013, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 7, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Pamela Winkel participated in the hearing on behalf of the employer with witnesses, Sally Brecher and Tom Adams. Exhibits One through Four were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked as a breaker and candler in the egg-breaking department from April 18, 2013, to November 18, 2013. She was informed and understood that under the employer's work rules, falsification of documents was ground for termination.

The claimant went to the doctor office on November 4, 2013, due to medical concerns about her blood pressure and heart. She was given a holter monitor to wear for 24 hours. The doctor's office prepared a note that stated that the claimant could return to work on November 5 after the holter monitor appointment. The employer was notified of this.

On November 5, the claimant had the holter monitor appointment. She expressed concern to the nurse that she would need to shower in and shower out at work before reporting to work so the nurse prepared a note stating that the claimant could return to work on November 6 after the holter monitor was removed. The claimant did not report to work on November 6. She was excused from working on November 7 by her doctor.

The next day the claimant was scheduled to work was November 12. The claimant altered the medical statement prepared by the nurse on November 5 to state that she could return to work on November 7 so that she had an excuse for missing work on November 6. She turned the

medical statement in to employer. When she was questioned about the alteration, she denied altering it and said she never looked at it before turning it in. The employer checked with the nurse who denied changing the date and provided the unaltered medical document.

The employer discharged the claimant on November 18 for altering the medical statement.

Both the employer and the claimant participated in the fact-finding interview on December 5, 2013, and provided information about the separation from employment.

The claimant filed for and received a total of \$606.00 in unemployment insurance benefits for the weeks between November 17 and January 4, 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. There is no question the doctor's statement was altered. The only person with a reason to change it was the claimant. She knew the original statement required her to return to work on November 6, which she did not do. She needed a medical statement to cover missing work that day.

The claimant's violation of a known work rule 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 \$606.00 in benefits.

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

**DECISION:**

The unemployment insurance decision dated December 6, 2013, reference 02, 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 \$606.00 in benefits, which the claimant must repay.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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