

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

VICKI L BITNER
Claimant

APPEAL NO. 14A-UI-12332-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INNKEEPER HOSPITALITY SERVICES
Employer

OC: 10/26/14
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 November 29, 2014, reference 01, which concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 17, 2014. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Jacob Horner participated in the hearing on behalf of the employer with witnesses Kori Eller, Jeanna Trenkamp, and Derek Roorda. 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 for the employer as a banquet server from December 27, 2013 to October 10, 2014. She was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the manager two hours before the start of their shift if they were not able to work as scheduled.

The claimant was scheduled for work at 10:00 p.m. on October 10. She was scheduled to reset a banquet room overnight from the rehearsal dinner to the wedding setup. She had assured her manager, Jeanna Trenkamp, earlier in the day that she would be at work as scheduled. The claimant was absent from work without notice on October 10. As a result, the setup of the room for the wedding the next day was not done.

The claimant was also scheduled to work at 10:00 p.m. on October 11. Trenkamp tried to call her repeatedly on the morning of October 11. At about 11:00 a.m. the claimant returned the call and explained that she had missed work because something has come up.

On the evening of October 11 police officers with the Davenport Police Department came to the hotel searching for the claimant. Hotel management later learned that she had been arrested and jailed for failing to appear for judicial proceedings. She also missed work without notice on October 11. As a result of the absences without notice and the arrest and jailing for missing court appearances, the claimant was discharged by the human resource director Charlene Williams.

The claimant filed for and received a total of \$1449 for the weeks between October 26 and December 27, 2014.

The employer failed to participate in the fact-finding interview because the interviewer called the wrong number (563-484-5000) instead of the correct number that had been provided on the protest (563-484-5920).

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 absences from work without notice on October 10 and 11 were willful and material breaches of the duties and obligations to the employer and substantially disregarded 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 \$1449 in benefits.

In order to decide whether the claimant is required to repay the overpayment and whether the employer will be charged for overpaid benefits, it is necessary to decide whether the benefits were received due to fraud or willful misrepresentation by the claimant, which requires consideration of documents not included as part of the evidence. This issue is remanded to the Agency.

DECISION:

The unemployment insurance decision dated November 29, 2014, 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 claimant was overpaid \$1449 in benefits. The issue of whether the claimant is required to repay the overpayment and whether the employer will be charged for overpaid benefits is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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