

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGIE ROSENBAUM**  
Claimant

**APPEAL NO: 07A-UI-05770-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AKRON CHILDRENS CENTER**  
Employer

**OC: 05/06/07 R: 01  
Claimant: Respondent (2)**

Section 96.5-2-a - Discharge for Misconduct  
Section 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Akron Children's Center, Inc. (employer) appealed an unemployment insurance decision dated May 29, 2007, reference 01, which held that Angie Rosenbaum (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 11, 2007. The claimant participated in the hearing with husband Craig Rosenbaum and Attorney Al Sturgeon. The employer participated through Debbie Kroksh, Director and Jamie Pearson, Office Administrator. Employer's Exhibits One through Four was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time child care aide from September 16, 2004 through April 25, 2007. She sustained a work-related injury in approximately 2005. Her hours had varied from the date of hire dependant upon the employer's needs and the claimant's medical appointments. After the claimant was injured, the employer hired a part-time employee, Kerrie Olson, to assist on days with larger attendance numbers and when the claimant had medical appointments. The employer met with the claimant and Ms. Olson on April 19, 2007 to advise them that someone needed to begin staying until 5:30 p.m. due to the needs of the children. Ms. Olson volunteered to stay later the next week if the claimant was unable to do so.

The employer again discussed the hours with the claimant on Friday, April 20 and advised her that she would need to stay until 5:30 p.m. sometimes. The claimant refused and said she would not work past 5:00 p.m. because she had other commitments. The employer met with the claimant the next time on Monday, April 23 and discussed some other issues but ended with comments on the need for the claimant to work until 5:30 p.m. On the following day, the employer had prepared a summary of the April 23 meeting and directed the claimant to sign the summary which would also

serve as a warning. The claimant's signature was only to show that she received a copy of the summary and it said as much above the signature line. The claimant refused to sign the document.

The employer prepared a second warning on April 25, 2007 and directed the claimant to sign agreement to the warning or termination would occur. The claimant again refused to sign the warning which resulted in her discharge.

The claimant filed a claim for unemployment insurance benefits effective May 6, 2007 and has received benefits after the separation from employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for insubordination by refusing to work the assigned hours and refusing to sign two written warnings. She admits she told the employer on April 20, 2007 that she would not work until 5:30 p.m. but claims she changed her mind after that. The claimant also admits that she would not sign the warnings but explained that she did not agree with them. However, she was not required to agree with the warnings but merely acknowledge their receipt. The failure to acknowledge the receipt of a written reprimand by signing it constitutes job

misconduct as a matter of law. Green v. IDJS, 299 N.W.2d 651 (Iowa 1980). The claimant's insubordination 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 and benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The unemployment insurance decision dated May 29, 2007, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$510.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs