

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MERLENE M WILLIAMS
Claimant

APPEAL NO: 13A-UI-00798-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TENCO INDUSTRIES INC
Employer

OC: 12/16/12
Claimant: Respondent (R-2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated January 14, 2013, reference 01, that held the claimant was not discharged for misconduct on December 18, 2012, and benefits are allowed. A telephone hearing was held on April 24, 2013. The claimant, and witness, Rebecca McMurray, participated. Joanie Lundy, HR Director; John Post, Residential Care Coordinator; Tristin Kaake, Residential Staff; and Ashley Riggle, Auditor participated for the employer. Employer Exhibits One was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant began employment on June 25, 2012, and last worked for the employer as a full-time residential instructor on December 18. The employer runs Jefferson House for three disabled clients in Ottumwa, Iowa.

The employer requires claimant to document her work and turn it in on a weekly basis so the employer can bill for services rendered to its clients. The employer provides weekly notices to claimant when it does not receive documentation. The employer began to experience some documentation delinquency around the first of October 2012.

The employer issued claimant a December 10, 2012 written warning that she received on December 13. The claimant was warned about several issues that included a failure to provide documentation. Claimant was instructed she needed to provide weekly documentation. The warning states that a further violation could lead to employment termination.

The employer put claimant on notice of the list of missing documentation for client services that involved #4 or #5 clients. Claimant approached the employer auditor about this issue on

December 19 office visit. Claimant said she would not provide it as it would be fraud. Claimant went to the Care Coordinator Post's office about the same issue. She understood from the auditor she would be taken off the work schedule until she got the documentation done.

Claimant went to Post to complain about the documentation issue. She refused to provide documents and raised her voice when Post tried to explain why it was needed. He finally told claimant to leave the office. The employer discharged claimant the following day for a failure to follow instructions, rudeness, job performance and insubordination.

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.

The administrative law judge concludes employer has established claimant was discharged for misconduct in connection with employment on December 20, 2012.

Claimant offered a great volume of acrimony in her testimony that included commentary on employer testimony that diminishes her credibility in this matter. Claimant signed for the December warning that vehemently disagrees with in this matter but she offered no written comments on it or in response to it before her December 20 discharge.

The claimant blames the employer for losing her documentation and she believes it is fraud for her re-writing and submitting it when she is requested to do so. She was given weekly and

timely requests to do it. She was notified what was needed. The claimant has offered an unreasonable position for denying the employer request that is an act of misconduct in connection for employment as a job refusal. It constitutes job disqualifying misconduct in light of the prior written warning that includes an admonition for failing to timely submit documentation. While the employer offered other discharge reasons, this is the one that is disqualifying misconduct.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since claimant has been disqualified in this matter after receiving UI benefits, the overpayment issue is remanded to Claims for a decision.

DECISION:

The department decision dated January 14, 2013, reference 01, is reversed. The claimant was discharged for misconduct on December 20, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/tll