

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MANIVONE SAMOUNTRY**  
Claimant

**APPEAL NO. 09A-UI-10032-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EMCO ENTERPRISES INC**  
Employer

**OC: 11/30/08**  
**Claimant: Respondent (4-R)**

Section 96.5-2-a – Discharge  
Section 96.4-3 – Able to and Available for Work  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated July 1, 2009, reference 01, that concluded Manivone Samountry was forced to resign or be discharged. A telephone hearing was held on July 29, 2009. The parties were properly notified about the hearing. Samountry participated in the hearing, with the assistance of interpreter, Chris Chung, and a witness, Do Baccum. No one participated in the hearing on behalf of the employer.

**ISSUES:**

Was Samountry discharged for work-connected misconduct?  
Was she able to and available for work?  
Was she overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

Manivone Samountry worked full time for the employer as an assembly line worker from January 15, 2001, to June 2, 2009. She injured her arm at work and had surgery. She was off work periodically due to medical problems with her arms, which were considered workers' compensation injuries.

On June 2, 2009, Samountry participated in a workers' compensation mediation session. The workers' compensation claim was settled. In the agreement, her employment with the employer was terminated and the employer agreed not to contest her unemployment insurance claim.

Despite this agreement, the employer (1) protested the claim; (2) failed to participate in the fact-finding interview, which resulted in the award of benefits to Samountry; and (3) appealed the decision to award benefits to Samountry, which resulted in this hearing at which the employer failed to participate.

Samountry filed a new claim for unemployment insurance benefits with an effective date of November 30, 2008. She reopened the claim effective May 31, 2009, after her employment

was terminated. She filed for and received a total of \$2,579.00 in unemployment insurance benefits for the weeks between May 31 and July 25, 2009.

As of the time Samounry filed for unemployment insurance benefits, she was not able to work due to her medical problems with her arms. She is unaware of any jobs she can do with her arm problems. She has applied for social security disability benefits and understands that she will be receiving benefits after the disability waiting period.

**REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code section 96.5-1 and 96.5-2-a. Samounry was discharged as part of her workers' compensation settlement and committed no misconduct.

The issue in this case is whether Samounry is able to work and available for work as required by the unemployment insurance law in Iowa Code section 96.4-3.

The evidence establishes Samounry is not able to work or available for work. She admitted it in her testimony, and the fact that her application for disability benefits has been approved supports this conclusion. She is ineligible for benefits effective May 31, 2009. The employer cannot agree to Samounry receiving benefits if she does not meet the conditions for receipt of benefits.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, Samounry has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated July 1, 2009, reference 01, is modified. Manivone Samounry is not disqualified from receiving unemployment insurance benefits based on her separation from work. She is ineligible for benefits effective May 31, 2009, and continuing until

she reapplies for benefits and shows she is able to work. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/pjs