

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHLEEN BATTIN

Claimant

APPEAL NO: 10A-UI-17720-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

OC: 11-14-10

Claimant: Respondent (2R)

Section 96.5-2-a – Discharge/Misconduct

Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 21, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 8, 2011. The claimant participated in the hearing with Attorney D.J. Smith. Mary Eggenburg, Staff Benefits Specialist; Debby Zumbach, Senior Associate Director of Business Services; and Rhonda Weaver, Human Resources Specialist, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time marketing and distribution administrator for The University of Iowa from February 4, 2008 to November 15, 2010. On September 26, 2008, the claimant received her six-month review and the evaluation stated she needed to show improvement in the way she used words and the tone of her voice when speaking to others. On October 23, 2008, the employer received a report that the claimant was “abrasive and intimidating” when explaining a process to another employee in front of other staff members who indicated they were uncomfortable as a result of the claimant’s behavior. On October 24, 2008, she received a written warning and was placed on a last-chance agreement for talking to and treating others disrespectfully. She was notified at that time if she failed to meet the employer’s guidelines termination would occur. On October 27, 2008, she was placed on a performance improvement plan (PIP) as a result of her conduct October 23 and 24, 2008. On July 15, 2009, a co-worker complained that the claimant treated him like he was “dumb” and that she was disrespectful. He also said others felt the same way. The claimant apologized after being notified of the complaint but the co-worker refused to accept her apology. On December 18, 2009, another co-worker stated the claimant said she was not in a good mood and told him, “You are a waste of time. You come to me with just too many interruptions.” The employer extended her probationary period by one year December 21, 2009, for the previous incidents. On January 18,

2010, the claimant was notified she was being demoted from business manager I to marketing and distribution administrator with a pay cut from \$60,000.00 per year to \$53,701.00. The claimant accepted the demotion. On March 17, 2010, a mailroom employee reported a confrontation with the claimant regarding envelopes because she was upset he did not bring the envelopes to her and continued to follow him berating him. He told the employer he felt like the claimant's "punching bag" and he was so upset he stayed home from work the following day. The claimant apologized to him for her actions but he refused to accept her apology. On July 29, 2010, a co-worker complained that the claimant was sending "snotty" e-mails to him and that the claimant apologized by grabbing him by both arms and burying her head in his chest making him uncomfortable and he wanted her to stop. On November 11, 2010, the claimant asked Debby Zumbach, Senior Associate Director of Business Services, to meet with her so she could show her a mailing. The claimant had inserted her name on the mailing list so she could review the product and Ms. Zumbach expressed concern about the claimant's level of involvement in the mailing. During their conversation the claimant mentioned she scheduled a meeting with Vice-President for Strategic Communications Tyson Kendig. Ms. Zumbach asked why she was meeting with Mr. Kendig because her actions were outside the chain of command and the claimant stated she wanted to know what her job description was. Ms. Zumbach told her she should have talked to her supervisor first and she was sure the claimant received a copy of her job description at the time of her demotion. The claimant denied receiving one and Ms. Zumbach stated she would provide one to her. The claimant became very disrespectful and said Ms. Zumbach did not understand and accused her of changing her job title without the claimant's knowledge, a charge Ms. Zumbach denied. After further conversation Ms. Zumbach believed the claimant had overridden the computer system and changed her job title. Later that day the claimant, as well as Ms. Zumbach met with the claimant's supervisor. On November 12, 2010, Ms. Zumbach expressed her concern to the claimant that if she talked to customers in the same tone of voice used with Ms. Zumbach and treated customers the way she did her supervisors and co-workers how would she speak to customers and the claimant said she would never talk to customers that way. After the meeting Ms. Zumbach learned the claimant tried to set up a meeting with the mail supervisor and Ms. Zumbach was worried about the meeting because the claimant had a reputation as a bully. Ms. Zumbach, who began her position with the employer July 1, 2010, met with human resources and learned of the March and July 2010 incidents and spoke to the claimant's supervisor and became aware there had been no discussion with the claimant about the claimant's behavior whereby she treated Ms. Zumbach and others poorly. During this time Ms. Zumbach also found out the claimant shared confidential information about internal problems the employer was experiencing with a client. The claimant then sent an e-mail to the customer asking "please don't tell anyone I shared confidential information with you or I could be fired." Based on all of the situations stated above, the employer decided to terminate the claimant's employment November 15, 2010.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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 of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant repeatedly treated other employees and even supervisors with disrespect and disdain. She was warned about her behavior, placed on a last-chance agreement and demoted but her behavior toward other employees and supervisors did not improve. There were at least five incidents following her last-chance agreement and it does not appear the claimant did anything to rein in her words, tone of voice, or actions toward others. She treated two co-workers in such a manner that she agreed they deserved an apology but neither man accepted her apology. On November 11, 2010, she asked Ms. Zumbach to meet with her and then treated her very disrespectfully when Ms. Zumbach disagreed with some of what the claimant was saying and expressed concern about the claimant going to see Mr. Kendig about her job description without attempting to secure the information from the chain of command first. In considering the totality of the claimant's actions, including her poor treatment of co-workers and supervisors, sharing confidential information with a client, and her disrespectful treatment of Ms. Zumbach, all after receiving a last chance agreement, the employer decided to terminate the claimant's employment. The claimant was given several opportunities to change her behavior but failed to do so on every occasion and the employer had a right to be concerned about how the claimant would treat customers if she was treating co-workers and supervisors disrespectfully. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

The unemployment insurance law provides that benefits must 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, the claimant has received benefits but was not eligible for those benefits. The matter of determining 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 December 21, 2010, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 has received benefits but was not eligible for those benefits. The matter of determining 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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