

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA A OSTLING

Claimant

APPEAL NO. 11A-UI-07916-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

OC: 04/17/11

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 June 14, 2011, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 13, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Maria Bozaan participated in the hearing on behalf of the employer with a witness, Nikki Bruno.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full-time as a production laborer from October 7, 2010, to April 7, 2011. On September 20, 2010, before the claimant started working for the employer, she was required to complete a pre-placement physical form. She was informed and understood that under the employer's work rules, falsification of company records was grounds for termination, and the form itself stated that falsification of information on the form could result in termination.

On the pre-placement physical form, the claimant answered "no" to the following questions. Have you ever had any of the following: numbness or tingling of the hands or fingers, back pain or problems, or shoulder pain problems.

On March 28, 2011, the claimant reported to the health services department that her left hand was hurting. When reviewing a prior incident report filed with health services, the health supervisor noticed that the claimant had received medical care from a doctor in Muscatine. He asked the claimant for a release to obtain medical information from the doctor, which she signed.

The employer received information from the doctor about the claimant's visit to the doctor on September 10, 2010. The doctor stated that the claimant on that date had complained about (1) stabbing mid-back pain when she lifted her arms above chest level that she had experienced for years since a horseback riding accident, (2) sciatic pain and burning pain down her left leg, (3) stabbing left shoulder pain on and off, (4) her fingers going numb when driving with her left hand, and (4) muscle spasms in the mid-back and paraspinal region.

The employer compared the information provided by the doctor with the claimant's answers on pre-placement form. She willfully misrepresented information on the pre-placement physical form, because there is no way that she could say on September 20 that she did not have the medical problems she reported to the doctor on September 10. If the claimant had answered the questioned truthfully the employer would have determined whether the claimant could perform the essential function of the job and, if not, whether there was another available job the claimant was capable of performing. After completing its investigation, the employer discharged the claimant on April 7, 2011, for falsifying the pre-placement form, which posed a risk to her well-being and potential liability to the employer.

The claimant has received unemployment insurance benefits since she filed her claim effective April 17, 2011.

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).

871 IAC 24.32(6) provides:

(6) False work application: When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified that she had went to the doctor in September to get a refill of her migraine medication and that the back, shoulder, and hand problems she mentioned to the doctor related to temporary problems she had after moving. This is not credible, because the claimant moved in May 2011, and it would be unlikely that these problems would have been reported to the doctor in September 2011 if they were truly moving-related temporary problems.

The evidence establishes the claimant made willful false statements on the pre-placement form that could have resulted in danger to the claimant's health or safety and liability to the employer. Misconduct has been shown.

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. But, the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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 § 96.3-7. In this case, the claimant 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 § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated June 14, 2011, reference 02, 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 matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw