

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA HALL
Claimant

APPEAL NO: 12A-UI-09511-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FMC/MARC INC ARBIES
Employer

OC: 07/01/12
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

FMC/MARC Inc., Arbies (employer) appealed an unemployment insurance decision dated August 1, 2012, reference 02, which held that Brenda Hall (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 August 29, 2012. The claimant participated in the hearing for a short period of time. The employer participated through Dan Kenne, district manager, and Tom Kuiper, employer representative. Employer's Exhibits One through Three were 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 claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: During the hearing, the claimant stated that she only had a ten-minute break and had to get back to work. The administrative law judge questioned her as to why she did not request an alternate time for the hearing when she could participate and she stated that the Appeals Section advised her that the time could not be changed. The claimant never spoke with the administrative law judge, who could have rescheduled the hearing, and she never mentioned any time constraints prior to going on record. She was questioned as to what she wanted to do and she said to just finish it "since they're not going to change their minds anyway." The claimant disconnected and the hearing was concluded within five minutes.

The claimant was employed as a part-time hourly assistant from April 19, 2011 through March 27, 2012, when she was discharged for violation of a final written warning. She was trained on cash handling procedures and received a written warning on March 18, 2012 for not

following proper procedures. The employer issued her a final written warning on March 24, 2012 for again not following cash procedures.

The third violation of the cash handling procedures on March 26, 2012 resulted in the claimant's termination. She was the manager in charge that shift and allowed multiple people to work in the same cash drawer. The drawer was short that evening in the amount of \$61.90, but the shortage could not be properly analyzed, since the cash handling policies had not been followed.

The claimant filed a claim for unemployment insurance benefits effective July 1, 2012 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 § 96.5-2-a.

Iowa Code § 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 discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa

1989). The claimant was discharged on March 27, 2012 for violation of her final written warning. She repeatedly failed to follow the proper cash handling procedures. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant's continued failure to follow proper cash handling policies after adequate training and multiple warnings is evidence of a pattern of carelessness sufficient to rise to the level of disqualifying misconduct. Benefits are therefore denied.

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated August 1, 2012, reference 02, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw