

testimony would have been repetitive and unnecessary. The employer was represented by Mara Benjamin of Employer's Unity, Inc., now TALX UC eXpress. The administrative law judge takes official notice of Iowa Workforce Development Department of unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time custodial worker from January 25, 2005 until she was discharged on September 8, 2005. The claimant was discharged for workplace violence. On September 2, 2005 while the claimant and a co-worker, Fabiola Garcia, Relief Housekeeper and one of the employer's witnesses, were clocking in after the supper break, the claimant became angry at Ms. Garcia. The claimant grabbed Ms. Garcia on the shoulder near the neck so hard that she left marks. Ms. Garcia told the claimant not to do this. The claimant then shoved Ms. Garcia at least one time with sufficient strength to push her forward. Ms. Garcia again asked the claimant not to do that and the claimant stopped and left. The claimant had been bothering Ms. Garcia and calling her names such as "fat." The claimant blamed Ms. Garcia for certain matters at work. At the time of the confrontation between the two, the claimant was mad and angry at Ms. Garcia. Ms. Garcia did nothing to the claimant either to cause the physical contact or thereafter to continue the physical contact. The employer learned about this later on September 2, 2005 and conducted an investigation. The claimant was suspended on September 2, 2005 pending the outcome of this investigation and pending determination as to what action to take against the claimant. The claimant was then discharged on September 8, 2005. The employer has work rules which also appear in its handbook prohibiting among other things fighting and providing for immediate suspension and discharge for violation. The employer does not tolerate any workforce violence. The claimant had never received any relevant or related warnings. There were no other reasons for the claimant's discharge. Pursuant to her claim for unemployment insurance benefits filed effective October 2, 2005, the claimant has received unemployment insurance benefits in the amount of \$1,170.00 as follows: \$234.00 per week for five weeks from benefit week ending October 8, 2005 to benefit week ending November 5, 2005.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

The employer's witness, Sue Shapley, Account Manager, credibly testified that the claimant was discharged on September 8, 2005, and the administrative law judge so concludes. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The three employer's witnesses, two of them with first hand personal observations, credibly testified that on September 2, 2005, the claimant was angry at a co-worker, Fabiola Garcia, Relief Housekeeper and one of the employer's witnesses, and as a result grabbed Ms. Fabiola on the shoulder near her neck hard enough to leave marks. When Ms. Garcia told the claimant not to do this the claimant then shoved Ms. Garcia at least once sufficiently hard to push Ms. Garcia

forward. Again Ms. Garcia asked the claimant to stop and the claimant then did so. Ms. Garcia was afraid of the claimant. During this period of time Ms. Garcia did nothing to instigate the confrontation or to continue the confrontation. Ms. Garcia had had problems with the claimant in the past. The claimant was blaming Ms. Garcia for matters at work and bothering her and calling her names such as "fat." The employer has policies prohibiting fighting and other kinds of workplace violence and providing for immediate suspension and discharge for violation. The administrative law judge concludes the claimant's acts here were deliberate acts constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evince a willful or wanton disregard of the employer's interest and are disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,170.00 since separating from the employer on or about September 8, 2005, and filing for such benefits effective October 2, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa Law.

DECISION:

The representative's decision of October 17, 2005, reference 01, is reversed. The claimant, Nyachot M. Jai, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she was discharged for disqualifying misconduct. She has been overpaid unemployment insurance benefits in the amount of \$1,170.00.

kkf/kjw