IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

KARLA J KYLE
Claimant

HARRIS LAKE PARK COMM SCHOOL DIST
Employer

APPEAL NO: 19A-UI-05907-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/23/19
Claimant: Respondent (2)

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 July 18, 2019, reference 02, 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 August 29, 2019. The claimant participated in the hearing and was represented by Attorney Nathaniel Arnold. Andy Irwin, Superintendent and Greg Heemstra, Principal, participated in the hearing on behalf of the employer and were represented by Attorney Stephen Avery.

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 business education teacher for Harris Lake Park Community School District from August 2000 to June 30, 2019. The claimant taught half-time for the employer and half-time in the mornings for Clay Central Everly Community School District.

On May 31, 2018, the claimant was placed on an intensive assistance plan. That plan required the claimant to provide up-to-date lesson plans and put them on line by 8:30 a.m. every Monday. The lessons plans were to show the objective, activities, and assignments for every day of class. She was instructed to turn in a hard copy of her lesson plans to the office by noon every Monday.

She was told her grades needed to be turned into the office on time every midterm and quarter. She was supposed to print a hard copy of grades for all of her classes and turn them into the office the night before grades were due so the principal could look at her grades and sign them.

The claimant was also required to turn in a copy of her grades in all of her classes every Monday by noon in order to be in compliance with the district's goal of objective correlation. Additionally, she needed to turn in grades to the JMC program and the principal for report cards

and the OJT contact documents September 21, October 19, November 16, December 21, 2018 and February 1, March 8, April 12, and May 22, 2019.

Additionally, the intensive assistance plan listed her contractual obligations as making contact in person or over the phone with all on the job training (OJT) supervisors two time per quarter. She was told she needed to document all contacts with the OJT supervisors with the date and time of the call, who she spoke to and the outcome of the conversation. She was expected to add that requirement to the OJT syllabus and OJT supervisor information and provide that document to the building principal at midterm and quarter.

The intensive assistance plan stated the claimant would remain in her classroom with her students at all time during student contact time.

The claimant was directed to reflect on her teaching style and her ability to build relationships and using that information to develop a strategic plan to increase the enrollment in her classes by August 20, 2018. The claimant's first semester fifth period class had 13 students, her sixth period class had five students, her seventh period class had one student, and her eighth period class had 17 students.

The claimant was expected to meet with the principal on a regular basis but the claimant failed to meet with him and simply did not show up to the meetings without notifying him she would not be attending. On September 12, 2018, the principal sent the claimant an email asking her if she wanted to meet with him and offering help. The claimant did meet with the principal September 18, 2018, and discussed grades. The claimant stated she was having technical issues with schoology, the program she used, despite the fact that all the other teachers in the building used JMC, and the employer did not want her to use schoology, which was not compatible with JMC. The claimant did not ask for any assistance and did not attend the other progress meetings scheduled.

The principal required the claimant to provide updated lesson plans and make them available to him but there were eleven occasions, August 27, September 4, September 10, September 17, September 24, October 15, October 29, November 5, November 12, November 19, and December 10, 2018, where the lesson plans were incomplete, not visible to parents or students, or none were done which meant they were not available to the administration. During the week of September 10, 2018, the claimant only had a lesson plan done for Monday of that week. During the week of September 24, 2018, there were no lesson plans posted for her Personal Finance class. Most of the employer's weekly newsletters explained what lesson plans should look like and the employer showed the claimant another teacher's lesson plans so she would know what the employer expected.

On August 1, 2018, the principal sent the claimant an email restating that she needed to have her grades done on time and correctly. The secretary sent emails to the claimant asking her to get her midterm grades done by Tuesday, September 25, 2018, at 8:30 a.m. Many teachers publish their grades the Thursday or Friday before they are due. The claimant did not meet the September 25, 2018, at 8:30 a.m. deadline but sent her grades in that afternoon. The claimant's second quarter grades were not updated and she had exempt or scores of zero that were incorrect. On October 2, 2018, a student emailed the principal because his grades were not up to date for OJT. On September 21, 2018, the student went in to see why his grade was a D plus and the claimant said she would change it but had not done so by October 2, 2018. On December 11, 2018, the principal held a progress meeting with the claimant about her gradebook to make sure it was accurate. The claimant had incorrect scores from a project on Career Research which was assigned November 1, 2018. When questioned about the project grades the claimant eliminated the project from the gradebook and had to be told to reinstate it.

The claimant failed to meet with the OJT supervisors twice per quarter to ensure the students were safe and attending their jobs. On September 12, 2018, the employer sent the claimant an email reminding her to contact the supervisors for OJT. On October 22, 2018, the principal sent the claimant an email stating she needed to contact the OJT supervisors because she had not provided any documentation on her contacts. The principal then proceeded to make the calls his self. On October 24, 2018, the principal emailed the claimant again reminding her about contacting the OJT supervisors because during his calls to supervisors he learned one student had not shown up for his job for three or four days. The principal continued making the calls to the supervisors approximately every two weeks.

On November 21, 2018, the principal went to the claimant's classroom to discuss the Intensive Assistance Plan and the claimant, who had her coat on and did not take it off, turned away from the conversation and started going around the room turning off the computers rather than engage in the conversation with the principal. The claimant admitted during that talk that she could do more and said she would try to do better. On November 27, 2018, the principal wrote the claimant a letter about how serious the matter was and that she needed to meet expectations.

On January 11, 2019, the employer gave the claimant a notice of termination effective at the end of the school year. It asked her to finish the school year but told her it would not be renewing her contract. The claimant stated she needed time off for health reasons and took paid leave for the rest of the semester while the employer hired a long-term substitute.

The claimant has claimed and received unemployment insurance benefits in the amount of $3,693.00 for the ten weeks ending August 31, 2019.

The employer personally participated in the fact-finding interview through the statements of Superintendent Andy Irwin.

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, regardless of the source of the individual's wage credits:
>
> 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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant was placed on an Intensive Assistance Plan but failed to follow the requirements outlined in the plan. She did not prepare or update her lesson plans on more than ten occasions, did not turn her grades in on time and when she did turn them in they were not accurate, and did not contact the OJT supervisors. The employer reminded her what she needed to do in each area but the claimant failed to follow the conditions of the plan. Additionally, she failed to meet with the principal for updates and did not accept any of the help the employer offered and was prepared to give.

The claimant knew her job was in jeopardy but despite that knowledge she failed to meet the terms of the plan regarding issues that are basic to teaching such as lesson plans, grading and supervision of OJT students. She clung to the schoology program even though every other teacher in the school used the JMC program and the employer actively discouraged her use of schoology which was not compatible with JMC. Her continued issues with that program contributed to her problems submitting her grades on time. Even though her job was in jeopardy, the claimant refused to change the way she performed the basic functions of her job regardless of the fact she was clearly not meeting the requirements of the plan. While the claimant contends she performed the job to the best of her abilities, the administrative law judge does not find that persuasive. The claimant was a teacher for over 20 years. Surely, she understood the importance of lesson plans, timely and accurate grading, and supervision of students in OJT. Yet she was deficit in all these areas even though the employer told her what it expected and she had met expectations in the past. If she were performing the job to the best of her ability she would have submitted her lesson plans and grades on time and accurately and made the calls to the OJT supervisors. At the very least she would have met with the principal for frequent progress reports or asked for the assistance the employer was willing to provide her. Instead the claimant did not do any of these things and it is difficult to see that she made any effort to maintain her employment. Instead she demonstrated recurring negligence and a failure to follow directions.

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.

Iowa Admin. Code r. 871-24.10 provides:

> Employer and employer representative participation in fact-finding interviews.
>
> (1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.
>
> (2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.
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> (3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.
> (4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.
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> This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault.

However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer's account will not be charged for benefits paid.

The employer participated in the fact-finding interview personally through the statements of Superintendent Andy Irwin. Consequently, the claimant's overpayment of benefits cannot be waived and she is overpaid benefits in the amount of $3,693.00 for the ten weeks ending August 31, 2019.

DECISION:

The July 18, 2019, reference 02, 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 employer personally participated in the fact-finding interview within the meaning of the law. Therefore, the claimant is overpaid benefits in the amount of $3,693.00 for the ten weeks ending August 31, 2019.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/scn