IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SHASTA S MORGAN
Claimant

CALERIS INC
Employer

APPEAL NO. 14A-UI-03627-NT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/09/14
Claimant: Respondent (2)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Caleris, Inc. filed a timely appeal from a representative's decision dated March 31, 2014, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on April 24, 2014. Claimant participated. The employer participated by Ms. Stacy Springer, Human Resource Manager. Employer's Exhibits A, B, C, D, E, F, and G were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct in connection with her work and whether the claimant has been overpaid job insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Shasta Morgan was employed by Caleris, Inc. from September 19, 2011 until March 13, 2014 when she was discharged for repeated failure to follow the company's work break policies. Ms. Morgan was employed as a full-time technical support representative and was paid by the hour. Her immediate supervisor was Brian Springer.

The claimant was discharged on March 13, 2014 for violating the company's work break policy on March 11, 2014. Under established company policies, employees who work a 10-hour shift are entitled to a 30-minute lunch break and three 10-minute breaks from work during the day. Although Ms. Morgan was aware of the company rule and had been warned by the employer, the claimant exceeded the 30 minutes allowed for the three breaks that day by taking breaks that totaled 48 minutes. This time was taken in addition to the 30-minute lunch period that had been authorized by the employer.

Ms. Morgan had most recently received an escalated final break time warning on March 11, 2014 and was placed on notice at that time that any additional violations of the company's break policy would result in her termination from employment.

Ms. Morgan had been warned about following the company's break time policy on numerous occasions. The claimant at one point had been given authorization from the facility director to clock out if she needed additional break time. This permission was given because the claimant was pregnant at the time. Subsequently, the permission to clock out for extra break time was removed. Ms. Morgan received repeated warnings from the company following that date because she continued to exceed the permissible amount of time allowed for breaks each day. Claimant was aware that permission to clock out for additional break time had been removed and that the company expected her to adhere to the policy that allowed employees three break periods of 10 minutes each throughout a 10-hour workday.

Ms. Morgan had no explanation for the excessive break time that was taken on March 13, 2014.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

In discharge cases the employer has the burden of proof to establish disqualifying conduct on the part of a claimant. See Iowa Code section 96.6(2). Misconduct must be substantial in order

to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand the evidence in the record establishes that Ms. Morgan was aware of the company's work break policies. The claimant had acknowledged receipt of the policies and had acknowledged the receipt of numerous warnings on the issue while employed by the company. Although there was a period of time in which the claimant was authorized to take extra breaks due to her pregnant condition, that permission was withdrawn by the employer after the birth of the claimant's baby and the claimant was aware thereafter that she was expected to adhere to the three break per 10-hour shift policy and was aware that the total of the breaks should not exceed 30 minutes in addition to the half hour lunch period provided by the employer.

Because the claimant was otherwise a good employee, the employer had elected to issue Ms. Morgan numerous warnings on the issue before discharging on March 13, 2014. The claimant had no explanation for taking a total of 48 minutes of break on March 11, 2014, exceeding the permissible break time by 18 minutes that day.

The administrative law judge concludes based upon the evidence in the record that the employer has sustained its burden of proof in establishing the claimant's discharge took place under disqualifying conditions. The claimant continued to take excessive breaks after being repeatedly warned by the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Because the claimant has been deemed ineligible for benefits, any benefits claimant has received could constitute an overpayment. The administrative record reflects the claimant has received unemployment insurance benefits in the amount of $1,280.00 for the weeks ending March 15, 2014 through April 12, 2014. The administrative record also establishes that the employer did participate in the fact-finding interview or make a firsthand witness available for rebuttal.

Iowa Code section 96.3-7, as amended in 2008, provides:

> 7. Recovery of overpayment of benefits.
>
> a. 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.
>
> b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual,

benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

871 IAC 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.

(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.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. 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 if the claimant acted in good faith and was not otherwise at fault. In this case, the claimant has received benefits but was not eligible for those benefits. Since the employer did participate in the fact-finding interview, the claimant is obligated to repay the agency the benefits she received and the employer's account shall not be charged.

DECISION:

The representative's decision dated March 31, 2014, reference 01, is reversed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The claimant is overpaid $1,280.00 in unemployment insurance benefits. The employer's account shall not be charged as the employer participated in the fact-finding in this matter.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

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