

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAWDA M ALI
Claimant

APPEAL NO. 130-UI-00353-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI STAR MEAT & POULTRY LLC
Employer

OC: 09/02/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision of a representative dated October 15, 2012, reference 01, that concluded Sawda Ali's discharge was not for work-connected misconduct. Proper notice of the hearing was given to the parties. A hearing was scheduled for February 18, 2013. Sawda Ali failed to provide a telephone number to call for the hearing and did not participate. Laura Loney participated in the hearing on behalf of the employer. A hearing had been held before in the case on November 28, 2012, and a decision was issued on November 29, 2012, disqualifying Ali. The Employment Appeal Board remanded the case for a new hearing because Ali stated in her appeal that she had not received notice of that hearing. At the hearing on February 18, 2013, Loney agreed that a decision could be issued based on the record made during the November 28, 2012, hearing. Based on a careful review of that record (including testimony and Exhibit 1) and the law, the following findings of fact, reasoning and conclusions of law, and decision are entered.

ISSUES:

Was Sawda Ali discharged for work-connected misconduct?

Was Ali overpaid unemployment insurance benefits?

FINDINGS OF FACT:

Sawda Ali worked for the employer as a production laborer for the employer from December 7, 2011, to August 28, 2012. Ali was informed and understood that under the employer's work rules, violence in the workplace was not tolerated.

On August 28, 2012, Ali got into an argument with a foreman over Ali's stopping the production line. During the argument, Ali hit the foreman several times with her hardhat. She was suspended on August 28, 2012, pending an investigation of her conduct.

The employer discharged Ali on September 6, 2012, for violating the employer violence in the workplace policy.

Ali filed for and received a total of \$1,392.00 in unemployment insurance benefits for the weeks between September 2 and November 3, 2012.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether Sawda Ali 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).

Ali's hitting the foreman with her hardhat was violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. The next question is whether Ali was overpaid unemployment insurance benefits.

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 October 15, 2012, reference 01, is reversed. Sawda Ali 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

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