

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERI L KIMBALL**  
Claimant

**APPEAL NO. 14A-UI-04819-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MOSAIC**  
Employer

**OC: 04/06/14**  
**Claimant: Respondent (1/R)**

Iowa Code § 96.5(2)a – Disciplinary Suspension/Misconduct  
Iowa Code § 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Mosaic (employer) appealed a representative's May 7, 2014, decision (reference 02) that concluded Teri Kimball (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 29, 2014. The claimant participated personally. The employer was represented by Thomas Kuiper, Hearings Representative, and participated by Teresa TeKolste, Human Resources Manager; Jen Zajicek, Associate Director; and Phyllis Farrell, Unemployment Insurance Consultant.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 5, 2013, as a full-time direct support associate. The employer placed the claimant on disciplinary suspension from February 24 through May 1, 2014, during an investigation. On May 1, 2014, the employer notified the claimant the suspension had ended and scheduled a meeting for May 5, 2014. At the meeting the employer told the claimant the information it collected was inconclusive and the claimant would be returned to work with full pay. The claimant requested a change of status from full-time to part-time as needed. The employer complied with the claimant's request.

On May 6, 2014, the employer paid the claimant for wages she lost during the suspension. The claimant received 308.20 hours of pay at the rate of \$10.97 per hour or \$3,380.95 gross.

The claimant filed for unemployment insurance benefits with an effective date of April 6, 2014. She received \$1,261.00 in benefits after her separation from employment. The employer participated personally at the fact-finding interview on May 6, 2014, by Phyllis Farrell.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits.

Iowa Admin. Code r. 871-24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

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.

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of

job-related misconduct. As such the claimant is eligible to receive unemployment insurance benefits during her separation from employment by suspension

On May 6, 2014, the claimant received wages that the employer intended to cover the some of the same time period the claimant received unemployment insurance benefits. The issue of whether the claimant is overpaid unemployment insurance benefits due to the receipt of the employer's wages is remanded for determination.

**DECISION:**

The representative's May 7, 2014, decision (reference 02) is affirmed. The claimant was suspended from employment without establishment of misconduct. Benefits are allowed, provided the claimant is otherwise eligible. The issue of whether the claimant is overpaid unemployment insurance benefits due to the receipt of the employer's wages is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/css