

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATESHA MATHEWS
Claimant

APPEAL NO: 14A-UI-06185-DWT

ABM JANITORIAL SERVICES NORTH
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/11/14
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.3(7) – Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's June 3, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate at the July 9 hearing. Deniece Norman, a representative with Employers Edge, appeared on the employer's behalf. Erica Amos and John Van Kamen testified on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment benefits?

FINDINGS OF FACT:

The claimant started working for the employer in September 2013. The claimant worked as a full-time general cleaner, Sunday through Wednesday. She worked from 3:00 p.m. to 1:30 a.m. The employer's attendance policy informs employees that within a six-month rolling period they cannot have more than two unexcused absences or five tardies.

On April 29, 2014, the claimant received a written warning for having seven tardies in the last six months. The claimant had been tardy on November 26, 2013, January 26, February 9 and 28, March 2 and 31, and April 27, 2014. The employer gave her verbal warning on March 31, 2014 for have six tardies. The April 29 written warning informed the claimant that further violations of the employer's attendance policy could result in her termination.

On April 30, the claimant left work early at 5:40 p.m. She initially told the employer she had to leave because her child fell down some stairs and she had to take her child to the emergency room. Amos asked the claimant for a doctor's note to verify her child had been injured so this

absence could be excused. A few days later the claimant told the employer her child had not fallen and she could not provide a doctor's note. Since this was her eighth absence, the employer suspended the claimant for three days, May 12, 13 and 14.

On May 15, the claimant talked to Van Kamen about her attendance. The employer discharged the claimant on May 15 because she violated the employer's attendance policy by having too many tardies in the last six months.

The claimant established a claim for benefits during the week of May 11, 2014. The claimant filed claims for the weeks ending May 17, through June 21, 2014. She received a maximum of \$1,410 in benefits during these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known her job was in jeopardy when she received the April 29 written warning for having seven tardies within six months. The next day, the claimant left work early. The claimant was not honest about why she left work early. The employer heard rumors the claimant left to attend a wake, but this rumor was not substantiated. The claimant did not tell the employer the reason she left work early on April 30. The claimant not only violated the employer's attendance policy on April 30 after she received the April 29 written warning, she was also dishonest about why she left work early on April 30. The claimant committed work-connected misconduct. As of May 11, 2014, the claimant is not qualified to receive benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7). Based on this decision, the claimant is not qualified to receive benefits as of May 11, 2014. Therefore, she is not legally entitled to receive benefits for the weeks ending May 17 through June 21, 2014. She has been overpaid \$1,410 in benefits she received for these weeks.

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 though the claimant acted in good faith and was not otherwise at fault. The overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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.

In this case, the initial determination held the claimant qualified to receive benefits, but this was been reversed by this decision. The employer's representative indicated the employer participated at the fact-finding interview through documentation. The evidence does not establish what documents the employer presented to the claims specialist. Therefore, two issues will be remanded to the Benefits Bureau. First, the Benefits Bureau will determine if the employer satisfied the participation requirement of the law. Second, the Benefits Bureau will determine if the employer or the claimant is responsible for paying back the overpayment will be remanded to the Benefits Bureau. The Benefits Bureaus will to make a determination on these issues and send a written appealable determination to both parties.

DECISION:

The representative's June 3, 2014 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 11, 2014. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible.

The claimant has been overpaid \$1,410 in benefits she received for the weeks ending May 17 through June 21, 2014. The issues of whether the employer satisfied the participation requirement in a fact-finding interview and whether the claimant or the employer is responsible for paying back the overpayment is **Remanded** to the Benefits Bureau to determine and then send the parties an appealable determination.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css