

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TAMARA LUNDY
Claimant

APPEAL NO. 14A-UI-07308-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**JENNIE EDMUNDSON MEMORIAL
HOSPITAL**
Employer

OC: 06/15/14
Claimant: Respondent (2)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Jennie Edmundson Memorial Hospital (employer) appealed an unemployment insurance decision dated July 8, 2014, (reference 01), which held that Tamara Lundy (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 12, 2014. The claimant participated in the hearing with Ryan Lenagh. The employer participated through Donna Wellwood, Human Resources Director and Scott Jensen, Clinic Manager and Physical Therapist. Employer's Exhibits One and Two and Claimant's Exhibit A were admitted into evidence.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time rehab technician/secretary from July 29, 2002, through June 19, 2014, when she was discharged for a repeated failure to follow policies and procedures. She received three written warnings for excessive personal telephone calls and personal use of the internet. The first was issued on August 17, 2012, the second was issued on November 15, 2012; and the final warning was issued on February 13, 2013. The final warning also resulted in a suspension and the warning advised the claimant that another observed incident would result in termination.

The claimant was discharged on June 19, 2014, for continued personal telephone calls during work hours and ongoing use of the employer's computer for personal use. The employer provided records of the claimant's personal use of the work computer on May 22, June 4, June 6, June 9, June 10, June 12, and June 13, 2014.

The claimant filed a claim for unemployment insurance benefits effective June 15, 2014, and has received benefits after the separation from employment in the amount of \$2,499.00. Human Resources Director Donna Wellwood and Clinic Manager Scott Jensen participated in the fact-finding interview on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant discharged for a repeated failure to follow policies and procedures. She received two previous written warnings and a final warning for excessive calls during work hours and personal use of the employer's computer. While the claimant denies she used the employer's computer for personal use during non-break times, the evidence confirms otherwise. The claimant's repeated policy violations show a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits she has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant received benefits in the amount of \$2,499.00 as a result of this claim. A waiver cannot be considered because the employer participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount.

DECISION:

The unemployment insurance decision dated July 8, 2014, (reference 01), is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until 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 is overpaid benefits in the amount of \$2,499.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css