

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARMEL JALINSKI
Claimant

APPEAL NO. 13A-UI-11815-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BIG RIVER RESOURCES LLC
Employer

OC: 09/15/13
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Big River Resources, LLC (employer) appealed an unemployment insurance decision dated October 15, 2013, reference 01, which held that Carmel Jalinski (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 November 13, 2013. The claimant participated in the hearing. The employer participated through Brian Schasel, Environmental Technical Manager; Katie Power, Quality Control Lab Manager; and Marc Gieselman, Environmental Safety Coordinator. Employer's Exhibits One through 17 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 was hired on March 1, 2004 as a full-time production worker and became a lab technician in February 2006. She was discharged on September 17, 2013 for insubordination and a repeated failure to follow directives. In the final incident, the claimant told her co-workers on September 10, 2013, "Jim Lighting and Deb Green are fucking me! I should have received pay but they are fucking me!" When an employee is called in unexpectedly for an emergency, the employee is paid a minimum of four hours plus any extra time they work. The claimant had been previously advised she would need to come in to work and when she did, she was paid for her time as opposed to an emergency call. She was angry about it and complained to her co-workers. Environmental Safety Coordinator Marc Gieselman heard the claimant's comments and advised her they were unacceptable. The claimant responded that she could not trust the lab manager.

The claimant had demonstrated a consistent pattern of making negative comments, disregarding standard operating procedures and failing to wear safety attire. Even though no formal warnings were issued in 2013, the lab manager documented 18 separate issues in which the claimant had to be warned or reminded to follow policy and standard procedures. The claimant believed she knew more than the lab manager and felt it was merely a personality conflict.

Warnings issued to the claimant for inappropriate conduct dated back as far as 2007. She subsequently received disciplinary warnings on a regular basis for negative behavior and failure to follow policies. The claimant was suspended for three days on April 11, 2011 for insubordination by venting to co-workers about the lab manager. She was also warned about uncompleted work, computer games, personal protection equipment and excessive breaks. A follow-up meeting was held with her on April 19, 2011 and she was placed on a final notice.

The claimant's interpersonal relationships and her need for better communication were addressed in her annual evaluation on December 5, 2011. Her interpersonal relationships were again addressed in her evaluation on December 12, 2012, along with problems regarding her attendance and judgment. Since she had previously received numerous warnings for inappropriate behavior, her conduct on September 10, 2013 was the final straw.

The claimant filed a claim for unemployment insurance benefits effective September 15, 2013 and has received benefits after the separation from employment in the amount of \$3,380.00.

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 was discharged on September 17, 2013 for repeated inappropriate behavior and a failure to follow directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant had received numerous warnings but continued to disregard standard operating procedures and continued to show contempt for management. The employer has met its burden. 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.

In the case herein, a waiver cannot be considered because both parties 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 of \$3,380.00.

DECISION:

The unemployment insurance decision dated October 15, 2013, 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 \$3,380.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs