

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SIERRA N WOOLSON**  
Claimant

**APPEAL NO. 15A-UI-05576-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THOMAS L CARDELLA & ASSOCIATES  
INC**  
Employer

**OC: 04/19/15**  
**Claimant: Respondent (2R)**

Section 96.5-2-a - Discharge  
Section 96.3-7 - Benefit Overpayment

**STATEMENT OF THE CASE:**

Thomas L. Cardella Associates, Inc. failed a timely appeal from a representative's decision dated May 4, 2015, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice a telephone hearing was held on June 22, 2015. Claimant participated. The employer participated by Ms. Suzanna Bassler, Hearing Representative and Witness Mr. Dylan Hutton, Director of Operations. Employer's Exhibits A and B were admitted into evidence.

**ISSUES:**

An issue is whether the claimant was discharged for misconduct and whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all the evidence in the record the administrative law judge finds Ms. Sierra Woolson was employed by Thomas L. Cardella & Associates, Inc. from February 7, 2013 until April 22, 2015 when she was discharged from employment. Ms. Woolson was employed as a full-time customer service sales consultant and was paid by the hour.

Ms. Woolson was discharged on April 22, 2015 after she repeatedly refused to follow a reasonable and work-related directive that had been given to her by the Call Center Manager, Dylan Hutton.

As Ms. Woolson was beginning her work on April 22, 2015 Mr. Hutton asked the claimant which program she was dialing into that day. The claimant, who was in an open area where other employees were working, responded "I don't have to talk to you!" When Mr. Hutton repeated the question, Ms. Woolson responded in a raised voice "Ask my supervisor." When Mr. Hutton responded that he was the claimant's supervisor, claimant responded, "No you are not my supervisor, you are the center director."

Mr. Hutton, the center director subsequently called Ms. Woolson into his office and the claimant was discharged for insubordination in connection with her work. The employer believed that the claimant's refusal to answer his questions was embarrassing, loud and argumentative on the part of the claimant and a violation of company policy which prohibits employees from being insubordinate.

Ms. Woolson was angry because of a previous program change that had been mandated approximately 30 days before and because she believed that she been denied the choice of programs to dial in on that day based upon a decision that Mr. Hutton had made about the matter the preceding day. Prior to the incident in question the claimant had not been warned or counseled about insubordinate behavior.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does.

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).

In discharge cases the employer has the burden of proof in establishing misqualifying conduct on the part of the claimant. Iowa Code section 96.6 (2).

The employer has the right to expect decency and civility from its employees and an employee's use of insubordinate statements or offensive language in a confrontational and disrespectful context may be recognized as misconduct disqualifying the employee from the receipt of unemployment insurance benefits. See Henecke v. Iowa Dep't of Job Serv., 533 N.W.2d 573 (Iowa Ct. App. 1995) An isolated instance of inappropriate language or loud and insubordinate statements can constitute misconduct and warrant disqualification for unemployment benefits even if it is an isolated instance, if it serves to undermine a superior's authority. See Deever v. Hawkeye Window Cleaning, Inc., 447 N.W.2d 418 (Iowa Ct. of Appeals 1989)

The evidence in the record establishes that the center director determined which supervisor the claimant would be working with on the morning April 22, 2015, and asked the claimant that reasonable and work-related question. The claimant in a loud voice in the presence of other employees not only refused to answer the center director's reasonable inquiry, but did so in a manner that served to undermine the center director's authority in the eyes of other employees who were present. The claimant was discharged because she repeatedly refused to answer the work-related question and the manner in which she refused constituted insubordination. Accordingly the claimant is disqualified for the receipt of unemployment insurance benefits until she has worked in and been paid wages for insured work equaling 10 times her weekly benefit amount and meets all other eligibility requirements of Iowa law.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects the claimant has received unemployment insurance benefits in the amount of \$2681.00 since filing a claim with an effective date of April 19, 2015 for the week ending dates April 25, 2015 through June 27, 2015. The administrative record also establishes that the employer did participate in the fact-finding interview or make a firsthand witness available for rebuttal.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. 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. However, 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. The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code section 96.3-7. In this case the claimant has received benefits but was not eligible for those benefits. Since the employer did participate in the fact-finding interview the claimant is obligated to repay to the agency the benefits she received and the employer's account shall not be charged.

**DECISION:**

The representative's decision dated May 4, 2015, reference 01, is reversed. Claimant was discharged for misconduct in connection with her work. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount and is otherwise eligible. Claimant has been overpaid unemployment insurance benefits in the amount of \$2681.00 and is liable to repay that amount. The employer's account shall not be charged because the employer participated in the fact finding in this matter.

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Terry Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/mak