

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATRINA A BRACKIN
Claimant

APPEAL NO. 07A-UI-04468-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANNETT HOLDINGS INC
Employer

**OC: 04-01-07 R: 02
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
Section 96.3-7 - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 23, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 17, 2007. The claimant did participate. The employer did participate through Amy Barnett, Vice President, Tom Webster, Executive Vice President and was represented by Elizabeth Svehlek of TALX UC eXpress.

ISSUES:

Was the claimant discharged for work-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a customer service representative full time beginning January 16, 2006 through April 5, 2007 when she was discharged.

The claimant was discharged because she interfered with a driver assignment to a particular truck. The claimant wanted her boyfriend, Mr. Schoonover, to be assigned to a particular truck so she arranged to have the driver already assigned to that truck move. When the driver assigned to the truck complained, the employer learned that the claimant had tried to manipulate circumstances so that her boyfriend could be assigned to that truck. The claimant had been moved from her previous job when the employer discovered that she was engaged in a romantic relationship with one of the drivers. At the time of her job reassignment the claimant was specifically told not to interfere in the drivers' work. The claimant had no business reason to be involved in the assignment of which driver was assigned to which truck.

The driver who was being moved out of the truck alleged that when he complained about the move, he was told by the claimant that she controlled the freight and that if he did not agree to the move he might not get as favorable of freight runs. The driver complained because he felt that if he did not acquiesce to the move, then he was being threatened by the claimant. The

claimant admits that she had no business reason for making the move, and that prior to making the reassignment or trying to make the reassignment she did not ask her supervisor's permission or even inform her supervisor that she was getting involved.

The claimant violated the terms of her employment by moving a driver she had no business moving and by threatening another driver if he did not agree to the move. The claimant was taking the action to move the drivers to help her boyfriend get in a truck sooner. She had no business reason for making the move and no authority to make the decision to move drivers.

The claimant has received unemployment benefits since filing a claim with an effective date of April 1, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant knew that she had been moved from one job to another because she had developed a romantic relationship with one of the drivers. The administrative law judge is persuaded that the claimant had been told not to have any contact with the drivers or to interfere in the driver assignments. By trying to help her boyfriend get into a truck the claimant interfered in business decisions that were none of her concern all in an effort to assist one driver over another. The fact that she was trying to help her paramour is clear. The claimant admits she should have gotten permission from her supervisor, indicating that she knew she was overstepping her bounds when she tried to change the truck assignment. If the other driver was agreeable as the claimant alleges, then why would he have complained to management about the change. The administrative law judge finds that the claimant knew or should have known that she had no business trying to make the change to benefit her boyfriend. Her actions constitute disqualifying misconduct. Benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The April 23, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 \$2,082.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs