

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORRIE JACKSON**  
Claimant

**APPEAL NO. 11A-UI-01984-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JACOBSON STAFFING**  
Employer

**OC: 11/14/10**  
**Claimant: Respondent (2/R)**

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

**STATEMENT OF THE CASE:**

Jacobson Staffing (employer) appealed an unemployment insurance decision dated February 10, 2011, reference 04, which held that Lorrie Jackson (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing began on March 14, 2011. The claimant participated in the hearing. The employer participated through Julie Schroeder, payroll. The record was kept open until March 24, 2010 pending receipt of documentation from the claimant and the employer. The claimant did not submit any documentation, but the employer submitted five pages. The claimant was not available when called to complete the hearing on March 24, 2010, and, therefore, did not participate. The employer participated in the completion of the hearing on March 24, 2010 and Employer's Exhibits One and Two were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time temporary driver in the warehouse on March 20, 2010 and worked in this capacity until she sustained a work injury on June 17, 2010. She was subsequently placed on light duty and worked in a clerical position until she had surgery on August 19, 2010. The claimant was released without restriction on November 12, 2010.

When an employee leaves to go a doctor appointment for workers' compensation, he or she is required to clock out and back in when they return. The payroll person at the warehouse then adjusts the time punches so the employee gets paid for the time he or she was at the appointment. The claimant clocked in for work on November 15, 2010 at 5:48 a.m. Without clocking out, she left and went to Concentra Medical Center for therapy. The claimant arrived at Concentra at 10:55 a.m. and left at 11:29 p.m. She returned to work and did not clock in but left for the day at 2:32 p.m.

Concentra's therapy status report for November 15, 2010 confirmed that her appointment on November 16, 2010 was at 3:00 p.m.

The claimant clocked in for work on November 16, 2010 at 5:55 a.m. The client witnessed the claimant leave at 10:30 a.m. without punching out and she said she was going to her 11:00 a.m. appointment at Concentra. She came back at 2:40 p.m. and clocked out for the day but then went to her 3:00 p.m. appointment at Concentra, according to their documentation. The employer happened to call Concentra near 3:00 p.m. to find out whether the claimant's therapy appointment had been changed to 11:00 a.m. that morning. Concentra confirmed the claimant was present at Concentra at that time for her 3:00 p.m. appointment.

The contract employer ended the claimant's assignment on Wednesday, November 17, 2010. She clocked in at 5:48 a.m. and clocked out at an unknown time. The payroll person put in an end punch of 12:00 p.m. The claimant was discharged for time theft and providing false information regarding her medical appointments.

The claimant filed a claim for unemployment insurance benefits effective November 14, 2010 and has received benefits after the separation from employment.

#### **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.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on November 17, 2010 for time theft and providing false information regarding her worker's compensation medical appointments. Although she denied doing anything wrong, she provided false statements during the first part of the hearing and failed to participate in the completion of the hearing. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) 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 recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated February 10, 2011, reference 04, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw