

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE L WILSON
Claimant

APPEAL NO. 120-UI-15165-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HYPRO INC
Employer

OC: 09/09/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 1, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 6, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Cindy Baumeister participated in the hearing on behalf of the employer with witnesses, Karen Touve, Travis Frush, and Angie Maus.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as a basic machine operator from December 19, 2011, to September 11, 2012. The claimant had received discipline in 2012 as follows. On March 21, she received a written warning for violating the employer's work rules by leaving the plant without permission. On July 10, 2012, she received a final written warning for negligent work quality and failing to take direction from a trainer. She was informed that her job was in jeopardy due to her work performance.

One of the claimant's job responsibilities was to complete daily work-in-progress (WIP) sheets, which required her to visually inspect parts she made for conformity to specifications. During the period of time from early August to early September, the machine the claimant was using was making obviously defective and nonconforming tractor parts. There was a hole in the part that the claimant was to inspect and measure that was to go all the way through the part that was only partially drilled. The claimant failed to perform and record the proper daily inspections and on some occasions recorded that she had inspected the part and it met specifications and stated on the document that the hole was drilled "Thru." She could not have performed proper inspections and found the part met specifications or was drilled through. The claimant was not the only operator who worked on the machine in question and failed to properly inspect the

parts; there were several others who were discharged along with the claimant. There were 111 defective parts.

The employer did not discover the defective parts until the parts were shipped to Germany, Mexico, and John Deere in the United States. The parts were used in assembling tractors. Ultimately, the cost to the company from the negligence of the claimant and other operators is in the hundreds of thousands of dollars.

After discovering the defective parts and finding that the claimant had failed to conduct proper inspections and had falsified documents stating that she had inspected parts and they met specifications, the employer discharged the claimant for that reason on September 11, 2012. The employer also considered her past discipline in discharging her.

The claimant filed for and received a total of \$2,596.00 in unemployment insurance benefits for the weeks between September 9 and November 3, 2012.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's falsification of work documents and repeated negligence after receiving a final written warning materially breached her duties and was a violation or disregard of the standards of behavior the employer had the right to expect from the claimant. The recurrent negligence equals willful misconduct in culpability. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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 whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated October 1, 2012, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/tll