

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CORY M JONES**  
Claimant

**APPEAL NO: 14A-UI-10090-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEALTHCARE SERVICES GROUP INC**  
Employer

**OC: 08/24/14**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge  
Iowa Code § 96.3(7) – Overpayment of Benefits

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's September 16, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated at the October 16 hearing. Mike Anderson and Brian Whaley, district managers, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUES:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

Has the claimant been overpaid any benefits he has received since August 24, 2014?

If the claimant has been overpaid, is he required to pay back the overpayment or will the employer's account be charged for the overpayment of benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer in November 2013. He worked as a full-time account manager. As an account manager, he supervised between 16 and 21 employees. The employer gave the claimant a phone to use for business and for personal reasons.

During his employment, the claimant held employees accountable for their attendance and work performance. He understood that employees he supervised did not like his management style. He reported issues he had with employees to his supervisor.

On August 18, when Whaley came to visit the claimant's location, Employee B made a complaint about the claimant. Employee B reported he had seen a nude picture of another employee, Employee A, on the claimant's cell phone. Employee B understood that Employee A had been told she would be terminated if she did not send a nude picture of herself to the claimant. The employer talked to Employee A. She confirmed that the claimant had threatened to discipline and/or discharge her if she did not send him a nude picture of herself.

As a result of Employees A and B reports, on August 18 the employer suspended the claimant to investigate this matter. The employer told the claimant he was suspended for sexual harassment and for creating a hostile work environment. On August 18 the employer asked the claimant several times to make a written statement. The claimant did not make any written statements because he did not know the specifics of the complaint. Before the claimant turned in the employer's phone, he deleted pictures he had of Employee A and texts from her on his phone and all personal information that he had on this phone.

The employer was able to see four to five inappropriate nude pictures of Employee A on the phone the claimant turned in. The claimant acknowledged he sent Employee A an inappropriate picture of himself and she had sent him nude pictures of herself to him. The claimant denied showing Employee B any pictures he had on his phone or that he had threatened Employee A with any disciplinary action if she did not send him pictures of herself. On or about August 28 the claimant received information he was discharged for committing sexual harassment at work and for creating a hostile work environment.

The claimant established a claim for benefit during the week of August 24, 2014. He filed claims for the weeks ending August 30 through September 20, 2014. He received his maximum weekly benefit amount of \$391 for these weeks. The employer participated at the fact-finding interview.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The undisputed facts indicate employees the claimant supervised were unhappy with him; the claimant had nude pictures of an employee he supervised on the employer's phone; the employee sent the nude pictures to the claimant after he sent one of himself to her; and the claimant deleted all texts and pictures that were sent to and from this employee before he turned in the phone. The claimant disputed that he threatened retaliatory discipline if a female employee did not send nude pictures of herself to him and that the claimant showed another employee the nude pictures he had on the employer's phone. Neither party subpoenaed any employee to testify at the hearing. Since Employee A and B did not testify at the hearing, information they told the employer is hearsay information and cannot be given much weight if the claimant's testimony is credible.

I conclude the claimant's testimony is not credible for several reasons. First, some of his answers concerning the employer's sexual harassment and hostile work environment policy were evasive. Even though he asserted he did not know who Employee B was, he testified that he did not show Employee B any nude picture of Employee A. If the claimant did not have anything to hide, it was illogical for him to delete all the texts and pictures from Employee A. The claimant's decision to enter into a "consensual" relationship with an employee he supervised amounts to an extreme lack of good judgment. The fact he initially sent her an inappropriate picture of himself amounts to sexual harassment. The employer established the claimant was discharged for work-connected misconduct. As of August 24, 2014 the claimant is not qualified to receive benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7). Based on this decision, the claimant has been overpaid \$1564 in benefits he received for the weeks ending August 30 through September 20, 2014.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7) a, -b. Since the employer participated at the fact-finding interview the claimant is responsible for paying back the overpayment of benefits.

**DECISION:**

The representative's September 16, 2014 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of August 24, 2014 the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account is not subject to charge. The claimant has been overpaid \$1564 in benefits he received for the weeks ending August 30 through September 20, 2014. The claimant is responsible for paying back the overpayment of benefits.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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