

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LAKISHA R BASSETT
Claimant

APPEAL NO. 14A-UI-09810-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINNACLE HEALTH FACILITIES XVII L
Employer

OC: 08/12/14
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 September 12, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 9, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Heidi Stephenson participated in the hearing on behalf of the employer with a witness, Jacque Welchans. Exhibits One to Five were admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked as a head cook for the employer from June 16, 2011 to August 26, 2014. She was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer two hours before their shift start if they were not able to work as scheduled. She also was informed and understood that under the employer's work rules, records and documents were to be completed accurately and employees were not to threaten, intimidate, or coerce coworkers.

The claimant was verbally warned about texting a supervisor about an absence 30 minutes before her shift on April 1, 2014 and warned in writing about her job performance on July 22, 2014. On August 5, 2014 the claimant was suspended after she reported to work 15 minutes late without notice to her supervisor. She was informed that the next step in the disciplinary process would be termination.

The claimant was late for work again on August 9 (6 minutes), August 12 (3 minutes), August 19 (30 minutes), and August 22 (3 minutes). On August 23, 2014 the claimant was delayed in reporting to work due to an accident. The claimant was schedule to work at 6:30 a.m. on August 23. She called a dietary aide at about 6:20 a.m. to start the breakfast meal and arrived at work at about 6:34 a.m. but failed to punch in. She figured out that she had not punched in at about 7:30 a.m. and punched in at that time. She completed a missed punch form, stating that she had forgot to punch in and then clocked in late. She asked to have her arrival time changed to 6:34 a.m. When the dietary manager, Heidi Stephenson, was told that the claimant had called the dietary aide at about 6:30 a.m., she believed the claimant had falsely represented her time on the missing punch form.

The claimant believed that a dietary aide had stolen over \$100 from her wallet on August 23. She had reported this to Stephenson and asked not to be scheduled with the dietary aide because she thought there might be a conflict.

The claimant and the dietary aide were scheduled to work together on August 25, 2014. The claimant confronted the dietary aide about the missing money. When the dietary aide denied taking the money, the claimant threatened her with physical violence telling her to stop talking or the claimant would slap the piss out of her. The claimant told the aide that she had made a statement to management about the theft. The aide replied that claimant should do what she wanted to do. The claimant again told the aide to stop talking because it was taking everything in her not to whip her ass. The aide reported what happened to management.

Heidi Stephenson discharged the claimant on August 27, 2014 for falsifying documents, excessive lateness, and threatening another employee.

The employer's participants in the hearing were unaware of the employer's participation in the fact-finding interview.

The claimant filed for and received a total of \$1194 in unemployment insurance benefits for the weeks between August 24 and October 11, 2014.

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).

While I believe the claimant's testimony that she did not misrepresent her arrival time on August 23, that was not the only reason for the claimant's discharge. She was repeatedly late of work despite receiving warnings and she admitted to threatening physical violence to a coworker. She suggested that she should be excused for this because she had asked not to be scheduled with the coworker, but this was a deliberate violation of a work rule. Work-connected misconduct has been proven in this case.

The unemployment insurance law generally 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. But a claimant is not required 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.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$1194 in benefits.

Because the employer's participants in the hearing did not know what happened on the date of the fact-finding interview, and the determination regarding the employer's participation is based in part on documents submitted at the fact finding that were not sent to the parties, it is necessary to remand the issue of whether the benefits shall be recovered from the claimant and whether the employer's account is chargeable of the overpaid benefits.

DECISION:

The unemployment insurance decision dated September 12, 2014, 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 claimant was overpaid \$1194 in benefits. The issue of whether the benefits shall be recovered from the claimant or whether the employer's account is chargeable of the overpaid benefits is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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