

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINE M MARTIN
Claimant

APPEAL NO: 14A-UI-12325-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO LC
Employer

OC: 11/02/14
Claimant: Respondent (2/R)

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 November 19, 2014 (reference 01) determination 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 did not participate at the December 17 hearing. The claimant faxed a letter a day before the hearing indicating she was not going to participate because her phone had been disconnected and she had a job interview on December 17. Since the claimant did not call or provide a phone number to contact her, the scheduled hearing was not postponed. Holly Ruden, the general manager, and Craig Schaffer, an Equifax assistant claims manager, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits or did the employer discharge her for work-connected misconduct?

Has the claimant been overpaid any benefits?

FINDINGS OF FACT:

The employer hired the claimant in June 2014 to work 24 to 32 hours a week as a sales associate. The employer's policy indicates the employer considers an employee to have voluntarily quit if an employee does not call or report to work one scheduled day.

The claimant was scheduled to work on October 25, 26, November 1 and 2. Neither the claimant nor anyone on her behalf notified the employer that she was unable to work as scheduled these days. Ruden called the claimant but the claimant did not answer her phone. On November 3 or 4 the claimant called the employer to report she had just been released from jail. The claimant explained that she had been unable to work these four days because she had been in jail. Even though the claimant wanted to return to work, the employer informed the claimant she no longer had a job. The employer's records indicated the claimant's employment ended on November 5, 2014.

The claimant established a claim for benefits during the week of November 2, 2014. She has filed claims for the weeks ending November 8 through December 27, 2014. She received her maximum weekly benefit amount of \$178 for each of these weeks.

On November 17 Schaffer waited for a claims representative to contact him to provide information about the claimant's employment separation. Schaffer did not receive a call from a claims specialist.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. Even though the employer's policy presumes an employee quits when she does not call or report to work one day, the facts do not establish that the claimant voluntarily quit or intended to quit. Instead, the employer discharged the claimant on November 5, 2014 for failing to call or report to work for four scheduled days.

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7). Even though the claimant was incarcerated, she failed to make sure the employer was contacted and knew she was unable to work as scheduled on October 25, 26, November 1 and 2. Based on the facts in this case, the employer discharged the claimant for reasons that amount to work-connected misconduct. As of November 2, 2014 the claimant is not qualified to receive benefits.

If an individual receives benefits she 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). The claimant has been overpaid \$1424 in benefits that she received for the weeks ending November 8 through December 27, 2014.

The unemployment insurance law 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 will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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. Iowa Code § 96.3(7)b.

Even though the employer is not a base-period employer and will not be charged for any overpayment of benefits, if the employer did not participate at the fact-finding interview the claimant is not required to pay back the overpayment. The issues of whether the employer participated at the fact-finding interview and if the claimant did not willfully misrepresent the reasons for her employment separation will be remanded to the Benefits Bureau to decide and determine if the claimant is required to pay back the overpayment of benefits.

DECISION:

The representative's November 19, 2014 (reference 01) determination is reversed. The employer discharged the claimant for reasons amounting to work-connected misconduct. As of November 2, 2014 the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer is not a base-period employer and will not be charged.

The claimant has been overpaid \$1424 in benefits she received for the weeks ending November 8 through December 27, 2014.

The issues of whether the claimant is required to pay back the overpayment because the employer did not or did not satisfy the participation requirements are **remanded** to the Benefits Bureau to determine and issue an appealable decision to the parties.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can