

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATRINA KEYS

Claimant

APPEAL NO: 12A-UI-14693-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

POWERS MANUFACTURING CO

Employer

OC: 11/11/12

Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

Powers Manufacturing Company (employer) appealed an unemployment insurance decision dated December 6, 2012, reference 01, which held that Katrina Keys (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 16, 2013. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through Dawn Lowe, Human Resources. Employer's Exhibits One through Four were admitted into evidence. Based on the evidence, the arguments of the party, 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 claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time sewer from February 8, 2012 through November 12, 2012 when she was discharged for poor work performance. The employer manufactures athletic uniforms and provides daily assessments on new employees while they are in training. Employees are paid an incentive on the floor but they can be in training up to 90 days. The claimant's skill and ability allowed her to be placed on the floor less than one month after she was hired. She had a 30-day review on March 7, 2012; a 60-day review on April 9, 2012; and a 90-day review on June 22, 2012. In all three evaluations, the claimant's overall performance met expectations and she was taken off probation.

After her 90-day review, she was provided with and signed the employer's handbook on June 22, 2012. The employer Section 8 Work Rules are divided into two groups. Group One Work Rules will usually not result in discharge unless there are repeated violations. Group Two Work Rules are serious violations and may result in immediate discharge. Group Two Work Rule Number 6 addresses work performance not up to standard, inability to perform the job,

and/or repeated mistakes. The claimant signed for an updated handbook on September 1, 2012.

The claimant's work performance declined and she received a disciplinary warning on October 4, 2012. Unsatisfactory quality is not tolerated and the claimant was aware of that. The goal is 1.9 percent and she had 5.2 percent for the week of September 1, 23.6 percent for the week of September 8; 5.7 percent for the week of September 15; and 12.3 percent for the week of September 29. When an employee's work performance does not meet the quality standards, the sewing has to be taken apart and redone, which causes twice as much work.

The claimant was discharged on November 12, 2012 after an additional three weeks of unsatisfactory work quality. Instead of 1.9 percent, her percentage rate was 5.7 percent, 4.7 percent and 4.7 percent for the previous three weeks.

The claimant filed a claim for unemployment insurance benefits effective November 11, 2012 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 discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on November 12, 2012 for violation of company policy due to her poor work performance. When an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Department of Job Service*, 386 N.W.2d 552 (Iowa App. 1986). The claimant had sufficiently demonstrated she had the skills to meet the employer's quality standards but simply failed to do so during the last two months of her employment. 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 December 6, 2012, reference 01, 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css

NOTE TO EMPLOYER:

If you wish to change your mailing address of record please access your account at:
<https://www.myiowauui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:
<http://www.iowaworkforce.org/ui/uiemployers.htm> and
<http://www.youtube.com/watch?v=mpCM8FGQoY>