

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LASHANNA T NICKLES**

Claimant

**APPEAL NO. 11A-UI-09938-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**

Employer

**OC: 06/26/11**

**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 July 21, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 22, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Kelley Landolphi participated in the hearing on behalf of the employer with a witness, Jessica Ware. Exhibits One and Two 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 for the employer as a collector from October 20, 2008, to June 28, 2011. She was informed and understood that under the employer's work rules, internet and email use was for business purposes only and was not to be used for personal use.

On June 16, the claimant willfully violated the employer's work rule about email use by using her work email to forward an email to coworkers that had no business purpose. The email had photos attached under the category of subject line "European bags." They included bags with images depicting weapons and sexual content.

On June 28, 2011, one of the coworkers who received the email complained to management about the inappropriate content of the email attachments.

On June 29, 2011, the employer discharged the claimant for willful violation of the employer's email policy.

The claimant filed for and received unemployment insurance benefits for the weeks between June 26 and September 10, 2011.

## **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 section 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 violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The fact that someone else forwarded an inappropriate email to the claimant or a coworker asked that she forward the email does not excuse the claimant's conduct. 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 section 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 section 96.3-7-b is remanded to the Agency.

## **DECISION:**

The unemployment insurance decision dated July 21, 2011, 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 section 96.3-7-b is remanded to the Agency.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/css