

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH E FISHER
Claimant

APPEAL NO. 13A-UI-10766-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLS AND DALES CHILD DEVELOPMENT
Employer

OC: 08/25/13
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 16, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 15, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Joe Kane, attorney at law, participated in the hearing on behalf of the employer with Carol Boge, Katherine Grebin, Danielle Knockel. Exhibits One through Eleven 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 full time for the employer as a shift leader from October 10, 2011, to August 23, 2013. She was informed and understood that under the employer's fraternization policy, she was required to disclose the existence of a relationship with a subordinate that had progressed beyond a platonic friendship.

Sometime in 2013, the claimant became involved in a romantic relationship with a personal assistant who she supervised that she did not disclose to anyone in management. An employee reported this to management near the end of August. Earlier in the year, the claimant's supervisor had asked the claimant if she was having an intimate relationship with this person. She denied it at that time. Her supervisor told that that if she did become involved romantically with the personal assistant, she was to let the supervisor know.

The claimant met with her supervisor and the human resources manager on August 23, 2013, and was asked about whether she had a romantic relationship with the personal assistant. She started to cry and told them that she did become involved with the personal assistant but did not report it to her supervisor because she did not know how it would affect her job. She said she was preparing to report it and then the relationship ended. The claimant wrote a statement in

which she wrote: “There was a point in time when I was involved with a P.A. I was preparing myself to come forward when the relationship ended. I was not sure how to handle the matter as I was nervous as to how it would affect my life in many aspects, therefore I make the choice to do nothing and the relationship was ended.” The claimant knew she was required to report this relationship and willfully violated the employer's work rules by failing to do so.

The claimant was given the option to resign in lieu of being discharged for her violation of the employer's fraternization policy. She accepted that option and submitted a resignation, but she would have been discharged if she had not signed the resignation.

The claimant filed for and received a total of \$1,241 in unemployment insurance benefits for the weeks between August 25 and September 21, 2013.

The evidence is not clear about whether the employer participated in the fact-finding because while the claimant was present, the employer was not available when the fact-finding call was made.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. When an employer gives an employee an option to resign in lieu of being discharged, the separation is treated as a discharge. See 871 IAC 24.26(21) (quit in lieu of discharge is not a voluntary quit).

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's testimony that she never had a romantic relationship with the personal assistant she supervised is not credible—based on her own statement signed on August 23 and her comments to her supervisor and the human resources director. If she had no romantic relationship, and she and the personal assistant were just “close friends,” she would not have told her supervisor and the human resources director and written that she was “involved with a PA.” She would not have anything to come forward with and she would not have been unsure about handling the situation because a relationship that had not gone beyond the platonic-friendship phase did not need to be reported.

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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

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 will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant was overpaid \$1,241 in unemployment insurance benefits since she was not entitled to the benefits paid. The issue of whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency since the evidence in the record is unclear on this point.

DECISION:

The unemployment insurance decision dated September 16, 2013, 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 \$1,241 in unemployment insurance benefits. The issue of whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs