

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACY A LOCKE

Claimant

APPEAL NO: 14A-UI-05027-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

OC: 04/13/14

Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.3(7) – Overpayment of Benefits
871 IAC 26.14(7)b, c – Request to Reopen Hearing

STATEMENT OF THE CASE:

The employer appealed a representative's May 6, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate at the scheduled June 5 hearing. Paula Clarke, the director of nursing, and Lisa DeVol, a CMA/CNA, testified at the hearing. K.D. Kalber, Casey Prusia and Dayna Lovell were available to testify.

On June 6 at 3:30 p.m., the claimant contacted the Appeals Bureau to participate at the hearing scheduled the day before. The administrative law judge talked to the claimant on Monday, June 9. On June 9, the claimant requested that the hearing be reopened because she asserted she had a hearing notice that indicated the hearing was scheduled on June 6 at 1:30 p.m. The claimant agreed she would mail copies of the hearing notices she had received on June 10.

Based on the claimant's request to reopen the hearing, the evidence, the arguments of the parties, and the law, the administrative law judge denies the claimant's request to reopen the hearing and concludes that she is not qualified to receive benefits.

ISSUES:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

Has the claimant been overpaid any benefits she has received since April 13, 2014?

Is the claimant or the employer responsible for paying back any overpayment of benefits?

Did the claimant establish good cause to reopen the hearing?

FINDINGS OF FACT:

The claimant started working for the employer in August 2008. The claimant was usually scheduled to work about 27 hours a week as a part-time CNA. The claimant frequently worked more hours. The employer's policy informs employees that violence in the work place is not allowed. The policy also prohibits threats of violence.

On April 12, 2014, the claimant and other employees were talking. DeVol and Lovell were present. Devol understood the claimant was upset with an LPN, S.D., and would not talk to her because the claimant believed S.D. harassed her. For no apparent reason, the claimant angrily said, "If I see S.D. outside of work, I'm going to punch her in the face." This comment bothered employees who were present and employees reported her comment to the employer.

After the employer learned about the comment, Kalber and Clarke talked to the claimant on April 15. The claimant denied she made the comment. At least two employees heard the claimant threaten S.D. on July 12. The employer conducted the claimant had threatened a nurse, S.D., in front of other employees. The employer discharged the claimant on April 16 for her April 12 threatening comment.

The claimant established a claim for benefits during the week of April 13, 2014. She filed claims for the weeks ending April 10 through June 14, 2014. The claimant received a gross benefit payment of \$335 for the week ending April 19, 2014. She received her maximum weekly benefit amount of \$348 for the other weeks. The employer participated at the fact-finding interview.

The claimant received the hearing notice, but did not follow the hearing notice instructions. She did not call in or provide her phone number at the website as the hearing notice instructed her.. Hearings notices were mailed on May 20 informing both parties that a hearing would be scheduled on June 5 at 1:00 p.m. This was the only hearing notice the Appeals Bureau sent to the parties.

The claimant did not contact the Appeals Bureau until June 6 at 3:30 p.m. to participate at the scheduled hearing. When the administrative talked to the claimant on June 9, the claimant indicated she had received two hearing notices and one indicated the hearing was on June 6 at 1:30 p.m. Since the administrative law judge did not know what documentation the claimant had received, the claimant agreed to mail a copy of the hearing notices she had received by June 10. As of the date of this decision, the Appeals Bureau has not received anything from the claimant. A review of the Appeals Bureau schedule indicates this administrative law judge had no hearings scheduled on June 6. The claimant asserted she did not call the Appeals Bureau until 3:30 p.m. on June 6 because when she had her fact-finding interview she was called 45 minutes after the scheduled interview time. The claimant requested that the hearing be reopened.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that **failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing.** 871 IAC 26.14(7)(b) and (c). (Emphasis added.)

The claimant did not provide a copy of the documents she asserted she received. She did not establish that she received a hearing notice indicating the hearing was scheduled on June 6 at 1:30 p.m. The only hearing notice that was sent by the Appeals Bureau to the parties stated the hearing was scheduled on June 5 at 1:00 p.m.

Even if the claimant received paperwork that was confusing, waiting two hours after she understood the hearing was scheduled is not reasonable. The claimant did not establish good cause to reopen the hearing. Her request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer's policy does not allow employees to threaten other employees. On April 12, 2014, the claimant threatened to punch a nurse in the face if the claimant saw her outside of work. Based on the claimant's tone and demeanor, employees who heard the claimant make the comment were concerned and concluded the claimant would physically attack S.D. The evidence indicates the claimant threatened one of her supervisors in the presence of other employees. This conduct and comment amounts to work-connected misconduct. As of April 13, 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). Based on the decision in this case, the claimant is not legally entitled to receive benefits as of April 13, 2014. She has been overpaid \$3,119 in benefits she received for the weeks ending April 19 through June 14, 2014.

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's account will be charged for the overpaid benefits. Iowa Code § 96.3(7).

The facts indicate the employer participated at the fact-finding interview. Therefore, the claimant is required to pay back the overpayment of benefits.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's May 6, 2014 determination (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. As of April 13, 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's account will not be charged.

The claimant has been overpaid \$3,119 in benefits she received for the weeks ending April 19 through June 14, 2014. The claimant is responsible for paying back the overpayment of these benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css