

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CHANTELLE E LAIR**  
Claimant

**APPEAL 18A-UI-08025-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IA DEPT OF HUMAN SVCS-AREA & COUN**  
Employer

**OC: 07/01/18  
Claimant: Respondent (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

IA Dept of Human Svcs – Area & Coun (employer) filed an appeal from the July 19, 2018, reference 01, unemployment insurance decision that allowed benefits based upon the determination Chantelle E. Lair (claimant) was not discharged for willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on August 16, 2018. The claimant participated. The employer participated through Regional Business Manager David Dalton, Support Recovery Supervisor Deanna Mccord, and Hearing Representative Lisa Harroff. The Employer’s Exhibit 1 was admitted without objection.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer’s account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds that the facts in this case are largely uncontested. The claimant was employed full-time as a Clerk Specialist beginning on May 22, 2000, and was separated from employment on June 14, 2018, when she was discharged. The claimant was responsible for assisting with the collection of child support recovery payments. As part of her job, she had access to sensitive personal information in databases maintained by both the state and federal government.

The employer has a confidentiality policy due to the sensitive nature of the information accessed by its employees. Employees are required to review and sign the confidentiality policy on an annual basis. The policy states, in relevant part:

In performance of my responsibilities with respect to the Iowa Child Support program, I may acquire or have access to information regarding recipients of IV-

D and non-IV-D services and other individuals. I understand that regardless of any other provision of law, information recorded, obtained or maintained by the BOC is confidential. I understand I may view or release this confidential information only as required to perform my job duties.

...

I hereby acknowledge and agree to the above and to all following conditions in order to have access to confidential information, which includes but is not limited to an individual's social security number, residential and mailing address, employment information, and financial information:

1. I shall not view information about anyone receiving IV-D services or non-IV-D services unless such access is required by my job duties. I understand I should not access information about people out of curiosity, including people I have heard of or know personally.

...

3. I acknowledge that unauthorized viewing or disclosure of information may result in my immediate removal of access to information and records, as well as discipline up to and including discharge.

...

12. I acknowledge I am bound by state and federal confidentiality law that prohibits or restricts obtaining or disclosing state and federal data and program information. For example, see Iowa Code section 252B.9 and 252B.9A. Some of these statutes carry criminal penalty or civil liability for statute violation.

Exhibit A, pages 7 and 9. (Emphasis in original). The claimant most recently attended training on the confidentiality policy in October 2017.

On June 14, 2018, the employer received a copy of an access report which is reviewed to determine if employees are accessing the confidential information only for job-related reasons. The employer discovered that on April 13, 2018, the claimant had accessed the case of a new employee. She had viewed the case overview and the narratives related to his case. The employer investigated to determine if the claimant had any job-related reason to view his case and found she did not. During an interview with the claimant, she explained when she received the email that he was a new hire, his name sounded familiar and she checked to see if there would be a conflict for the office. She did not notify her supervisor that he had an open case with the office creating a conflict.

The employer was already aware of the conflict as the employee had disclosed it during his interview. The employer was in the process of transferring the case to another office to remove the conflict. The claimant's job duties did not include determining if a new employee had an open case with the office which created a conflict. In the past, if the claimant believed there might be a conflict between the office and a new employee, she would tell her supervisor without accessing the employee's case. The claimant had not received any prior warnings related to breaching the confidentiality policy. The employer determined the claimant was in violation of the confidentiality policy and Iowa Code section 252B.9(3). Exhibit 1, page 1. As a

result, the claimant lost all access to information and records and was discharged because she needed to have that access in order to do the job.

The administrative record reflects that the claimant has received unemployment benefits in the amount of \$2,910.00, since filing a claim with an effective date of July 1, 2018, for the six weeks ending August 11, 2018. On July 17, 2018, before the fact-finding interview, the employer submitted the claimant's employee separation form and the letter notifying her of her discharge. The fact-finder determined he needed rebuttal information from the employer regarding the timing of the final incident and when the employer obtained knowledge of it, but the employer did not provide the name and phone number of a firsthand witness to provide rebuttal testimony.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied. Additionally, the claimant is not obligated to repay the benefits received to date because the employer did not participate in the fact-finding interview and its account shall be charged.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The employer has an interest in maintaining confidentiality based on the sensitive nature of the information it collects and to which its employees have access. Additionally, employees who violate the policy lose access to the information and records needed to perform their job duties. The claimant was aware of the employer's policy and violated it when she viewed her new co-worker's case information without any job-related purpose. The claimant had not been instructed to determine if there was a conflict between the office and the new employee and, based on prior similar situations, knew to notify her supervisor, rather than accessing the information in the system, if she believed a conflict might exist. The claimant's conduct was a deliberate disregard of the employer's interest and is disqualifying even without prior warning. Benefits are denied.

Iowa Code section 96.3(7)a, b, as amended in 2008, provides:

Payment – determination – duration – child support intercept.

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred

because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871-subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said

representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. 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. Iowa Code § 96.3(7). However, 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 Admin. Code r. 871-24.10(1). The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10.

In this case, the claimant has received benefits but was not eligible for those benefits. The employer provided written documentation in lieu of participation. In order to successfully participate via documentation, the employer must provide the specific rule or policy that was violated and the name and phone number of a firsthand witness to provide rebuttal testimony, if needed. Iowa Admin. Code r. 871-24.10(1). The employer failed to include the confidentiality policy or the contact information of a firsthand witness for rebuttal in its submission; therefore, the employer did not participate in the fact-finding interview. Since the employer did not participate in the fact-finding interview, the claimant is not obligated to repay to the agency the benefits she received and the employer's account shall be charged.

**DECISION:**

The July 19, 2018, reference 01, unemployment insurance decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 claimant has been overpaid unemployment insurance benefits in the amount of \$2,910.00. However, as the employer did not participate in the fact-finding interview, she is not obligated to repay the agency those benefits and the employer's account shall be charged.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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