

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TANYA J CRABTREE
Claimant

APPEAL NO: 14A-UI-12788-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARPET KING INC
Employer

OC: 10/26/14
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.3(7) – Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 1, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because her employment separation was for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate at the January 20 hearing. Scott O'Shea, attorney at law, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits and has been overpaid benefits.

ISSUES:

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

Has the claimant been overpaid benefits she received since October 26, 2014?

If the claimant has been overpaid is she required to pay back the overpayment or will the employer's account be charged?

FINDINGS OF FACT:

The claimant started working for the employer in October 2013 as a full-time outside sales person. During her employment, there were times the employer did not know where the claimant was at and could not get her to respond to phone calls or texts. In June and August 2014 Houdeshell warned the claimant that she had to communicate and tell him where she was at because the employer and the claimant's customers/contractors needed to know how to contact her. Houdeshell informed her that if she failed to let him know again where she was at and could not be contacted, her job was in jeopardy.

On October 23, a contractor, the claimant's customer tried to contact her and could not reach her. The employer then tried to call the claimant and sent her text messages, but the claimant did not contact the employer on October 23. The employer had no idea where the claimant was. On October 24, the employer again tried to contact the claimant, but was unsuccessful.

The claimant sent Houdeshell a text on Saturday asking about her paycheck. He did not respond to her text because he was at a soccer game and wanted to address issues with the claimant on Monday, October 27. When the claimant did not report to work on Monday, Houdeshell sent her a text and asked what was going on. At 4:30 p.m., the claimant sent a text that her boyfriend was going to pick up her paycheck. In a text the employer informed the claimant that he assumed she had quit because no one had heard from her since Wednesday, October 22. Even though the claimant indicated she had been working, no one had been able to contact her and she had not responded to her texts or voicemails. The employer learned the claimant had been at the hospital with her mother on Friday, October 24.

On Tuesday morning, October 28, the claimant sent an email asking if she still had a job. The employer told her no because she had been warned about similar behavior before and the employer could not have an employee who went missing and could not be contacted.

The claimant established a claim for benefits during the week of October 26. She filed claims for the weeks ending November 1, 2014, through January 17, 2015. She received her maximum weekly benefit amount of \$462 each week. The employer participated at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer or the employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. Even though the claimant did not call or report to work for three days, the facts do not establish that she quit or intended to quit. When the claimant asked on October 28 if she had a job, the employer ended the claimant's employment and discharged her.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

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 claimant knew or should have known her job was in jeopardy if she again failed to let Houdeshell know where she was at or how she could be contacted. He gave her two verbal warnings about this prior to October 24. Even if the claimant was working on October 23, she did not respond to her voice mails or text messages. On this day a contractor tried to contact her and she was not available and could not be reached. Even though the claimant was at the hospital with her mother on October 24, she had an obligation to contact the employer so the employer would know where she was.

The claimant's failure to again communicate with the employer amounts to an intentional and substantial disregard of the standard of behavior the employer had a right to expect from her especially after warning her that continued communication failures could result in her discharge. The employer discharged the claimant for reasons amounting to work-connected misconduct. As of October 26, 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 this decision, the claimant is not legally entitled to receive benefits for the weeks ending November 1, 2014, through January 17, 2015. She has been overpaid \$5544 in benefits she received for these weeks.

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)a, b.

The employer satisfied the participation requirements of the law. Therefore, the claimant is legally responsible for paying back the overpayment. The employer's account will not be charged.

DECISION:

The representative's December 1, 2014 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of October 26, 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 claimant has been overpaid \$5544 in benefits she received for the weeks ending November 1, 2014, through January 17, 2015. The claimant is legally responsible for paying back the overpayment. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs