

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEXANDRA A MCGEE
Claimant

APPEAL NO: 13A-UI-10235-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRINCIPAL LIFE INSURANCE CO
Employer

OC: 08/04/13
Claimant: Respondent (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
Section 96.3-7a,b – Benefit Overpayment Recovery

STATEMENT OF THE CASE:

The employer appealed a department decision dated August 22, 2013, reference 01, that held the claimant was not discharged for misconduct on July 31, 2013, and benefits are allowed. A telephone hearing was held on October 2, 2013. The claimant participated. Cheryl Hanniford, Employee Relations Consultant, and Jeff Aldridge, Investigator for Global Security, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on September 24, 2012, and last worked for the employer as a full-time investor specialist on July 31, 2013. She received the employer policies in an employee handbook. The policy provides for employee access and a procedure for visitor/guest access. The policy prohibits an employee from using a personal badge to allow a visitor and/or guest to enter premises. The policy directs a visitor/guest to a central building location/operations center for after business hours access where the person presents an ID, is registered and issued a name badge.

A security person e-mailed Investigator Aldridge a concern about employee-visitor access on July 29 and the security video of the building entry was reviewed. It showed claimant using her access badge to allow a male visitor to enter the building with her about 9:56 p.m. The visitor did not register with security. Claimant had to wait to use her badge to get in due to a two-minute time lapse that is a security measure.

When confronted by the Investigator, claimant admitted she used her badge to allow her boyfriend to enter the building and he did not register with security. She told the employer they

went and used the employer work-out facility though the employer notes it was closed at that time.

The employer terminated claimant on July 31 for violating its security access policy on July 29. It also was in the process of issuing claimant a final warning for attendance.

An employer representative (TALX) personally participated in department fact finding and offered specific information on the discharge reason. Claimant has been receiving benefits on her claim. The department offset a benefit entitlement totaling \$1,668.00 for a five-week period ending September 7, 2013 and paid her \$1,959.00 for a four-week period ending September 28.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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.

the administrative law judge concludes employer has established claimant was discharged for misconduct in connection with employment on July 31, 2013 for violation of policy.

The claimant knew the employer access policy and deliberately violated it by allowing her boyfriend to enter the building on her access badge. She also failed to have him register with security as a visitor. Given the employer security policy and claimant's knowledge this is a serious breach. Job disqualifying misconduct is established.

Iowa Code section 96.3-7, as amended in 2008, provides:

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) 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. 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. The employer shall not be charged with the benefits.

(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.

The administrative law judge concludes claimant is overpaid benefits \$3,627.00 due to the disqualification imposed in this decision. The overpayment is due to claimant receiving an offset credit totaling \$1,668.00 for a five-week period ending September 7, 2013 and four paid weeks of benefits \$1,959.00 for the week ending September 28, 2013 before she was disqualified.

As to the issue of employer fact-finding participation, 871 IAC 24.10(1) states it is submitting detailed factual information of the quantity and quality that if un-rebutted would be sufficient to result in a decision favorable to the employer. Live testimony or firsthand knowledge is the most effective means to participate. Written or oral statements or general conclusions with supporting detailed factual information an after fact-finding submissions are not considered participation.

The administrative law judge further concludes claimant is not granted payment relief from the \$3,627.00 overpayment because an employer representative personally participated in department fact finding.

DECISION:

The department decision dated August 22, 2013, reference 01, is reversed. The claimant was discharged for misconduct on July 31, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. Claimant is overpaid benefits \$3,627.00.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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