

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENISE KNOX**  
Claimant

**APPEAL NO. 14A-UI-03663-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**W & G MARKETING CO INC**  
Employer

**OC: 03/16/14**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment of Benefits  
871 IAC R 24(10 – Employer Chargeability

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated April 2, 2014, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on April 9, 2014, by telephone conference call. The claimant participated personally. Employer participated by Darren Dies, president; and Grant Cooper, pick 'n' pack supervisor. The record consists of the testimony of Darren Dies; the testimony of Grant Cooper; and the testimony of Denise Knox. Dustin Mueller served as attorney for the claimant. Official notice is taken of agency records.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a food processing company located in Ames, Iowa. The claimant was hired on June 1, 2013, as a part-time pick "n" pack worker. Her last day of work was March 13, 2014. She was terminated on March 13, 2014.

The events that led up to the claimant's termination began with a worker related injury that took place on December 2, 2013. She sustained an injury to her left wrist and arm. She was taken off work. She was released to light duty. On February 24, 2014, arrangements were for the claimant to work light duty. On Monday, March 3, 2014, the claimant was supposed to come into work at 10:00 a.m. She did not come until 12:30 p.m. She did not come to work on March 4, 2014. On Wednesday, March 5, 2014, she provided revised doctor's restrictions. She did do light duty work on March 6, 2014. She did not come in on Friday, March 7, 2014.

On March 8, 2014, she called off due to a court appointment. She did not come in on March 11, 2014, due to a family emergency. She provided revised doctor's restrictions on March 12, 2014. She did come to work on March 13, 2014.

On March 13, 2014, she had a meeting with the employer in which she was given a warning. She was cited for failing to do the work she was assigned to do on March 6, 2014. She was also warned about leaving early and for the unexcused absences. The claimant refused to acknowledge the issue and refused to sign the statement. She would not write her version of events for the employers. The claimant was told that a work rule required her to sign the statement even if she disagreed with the statement. She was further informed that if she failed to sign the statement it would be grounds for immediate termination according to written job rules, of which the claimant was familiar. The claimant refused to sign and walked off the job. The claimant was not in jeopardy of losing her job at the time she left the workplace.

The claimant established an original claim for benefits with an original claim for benefits on March 16, 2014. She was paid benefits from the week ending March 22, 2014, through the week ending April 19, 2014 in the amount of \$204.00 per week. The employer participated in fact finding.

#### **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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990) The employer has the burden of proof.

The claimant is not eligible for unemployment insurance benefits. The evidence showed that the claimant refused to sign a disciplinary action form, which was grounds for immediate termination under the employer's written work rules. The disciplinary form was not a termination. The claimant was not in danger of being terminated from her job. She was given a chance to write her version of events. She chose not to do so. All she was acknowledging was that she was given a copy of the form. The claimant's refusal to sign was insubordination, which is misconduct. Benefits are denied.

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 Section 96.3-7-a, b.

The claimant received benefit but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits

**DECISION:**

The decision of the representative dated April 2, 2014, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefits amount, provided claimant is otherwise eligible. The claimant shall be required to repay the overpayment of benefits and the employer's account will not be charged.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs