

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KITTIE N DALTON**  
Claimant

**APPEAL NO: 14A-UI-02852-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC**  
Employer

**OC: 04/07/13**  
**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 March 6, 2014 determination (reference 04) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation was for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate at the April 7 hearing. Maria Mays, the risk administrative assistant, and James Cole 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.

**ISSUES:**

Did the employer discharge the claimant for work-connected misconduct or did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits?

Has the claimant been overpaid benefits she received for the week ending March 8, 2014?

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

**FINDINGS OF FACT:**

The employer is a staffing service agency. The claimant registered to work for the employer's clients in August 2008. The claimant's most recent assignment began on November 17, 2013. The claimant worked at this assignment until February 9, 2014. She did not complete the assignment. The claimant did not call or report to the assignment on February 10, 11 and 12, 2014. The employer called the claimant and told her she was going to receive a written warning for failing to call or report to work for three days. The employer asked the claimant to come to the office to sign the written warning. When the claimant did not go to the office to sign the warning by February 26, the employer called her again asking her to come to office to sign the written warning. The claimant started talking inappropriately to the account manager who called her. This account manager discharged the claimant for her inappropriate conduct. The account manager also told the claimant that the employer would not assign her to any other jobs. The next day, the employer mailed the claimant a termination letter stating the same things.

The claimant reopened her claim the weeks of February 2 and March 2, 2014. The employer participated at the fact-finding interview by sending in a written statement.

The claimant filed a claim for benefits for the weeks ending March 8, 2014. She received a gross benefit payment of \$24.61 for this week.

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

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. Iowa Admin. Code r. 871-24.32(1)(a).

The claimant's conduct to an account manager during a February 26, 2014 phone conversation shows an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The claimant committed work-connected misconduct. As of February 26, 2014, the claimant is not qualified to receive benefits.

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.

Based on this decision, the claimant is not qualified to receive benefits as of March 2, 2014. Therefore, she has been overpaid \$24.61 in benefits that she received for the week ending March 8, 2014. Since the employer participated at the fact-finding interview, the claimant is responsible for paying back this amount.

**DECISION:**

The representative's March 6, 2014 determination (reference 04) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct on February 26, 2014. As of March 2, 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 \$24.61 in benefits she received for the week ending March 8, 2014. The claimant is responsible for paying back this amount.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs