

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICKI R BRIGGS

Claimant

APPEAL NO: 15A-UI-01648-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF CORRECTIONS – NEWTON

Employer

OC: 01/11/15

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 January 30, 2015 (reference 01) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for reasons that do not constitute work-connected misconduct. The claimant participated at the March 9 hearing. Sandra Linsin represented the employer. Darrell Morris and Bill Lehman testified on the employer's behalf.

ISSUES:

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

Has the claimant been overpaid benefits she has received since January 11, 2015?

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

FINDINGS OF FACT:

The employer hired the claimant to work as a full-time correctional officer on August 29, 2014. The employer's code of conduct informs employees they must cooperate and truthfully answer questions asked by a supervisor. If an employee is not honest and truthful, the employer may discipline the employee. The discipline may include termination of employment. Another policy informs employees they are not allowed to bring any personal property to the workplace.

On December 26, 2014, the claimant brought to work her personal handcuffs. At the end of her shift, another officer told the claimant she could not bring personal property to work. When the claimant left that shift, she put her handcuffs in her car and kept them there. Between December 26, 2014 and January 4, 2015, Lehman, the claimant's supervisor, received information that the claimant had brought her personal handcuffs to work. He talked to the claimant on January 4. After he asked if she brought her personal handcuffs to work, she told him no. Lehman then gave the claimant a coaching for an incident that happened the day before.

After his January 4, 2015 discussion with the claimant, Lehman learned from other officers that they had personally seen the claimant's personal handcuffs at work on December 26, 2015. Based on the fact the claimant was a probationary employee and was not honest with Lehman on January 4, 2015, the employer discharged her on January 12, 2015.

The claimant established a claim for benefits during the week of January 11, 2015. She filed claims for the weeks ending January 17 through March 21, 2015. She received a total of \$2615.87 in benefits for these weeks. The employer participated at the fact-finding interview.

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 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).

As a probationary employee, the claimant was learning the job. The claimant acknowledged that honesty is a requirement for any job. On January 4, the claimant told her supervisor she had not brought her personal handcuffs to work when she had done so on December 26, 2014. On December 26, an officer told the claimant she was not allowed to bring personal handcuffs to work. The claimant was involved in an incident on January 3, 2015. The employer's conclusion that she was not truthful on January 4 is supported by the evidence.

Even if the claimant thought Lehman asked if she brought handcuffs to work that day, she should have volunteered that she had brought them earlier and no longer brought them to work after another officer told her she could not do that. The claimant's failure to disclose that she brought her personal handcuffs to work on December 26, 2014, amounts to an intentional and substantial disregard of the standard of behavior the employer has to expect. For unemployment insurance purposes, the claimant committed work-connected misconduct. As of January 11, 2015 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). Since the claimant is not legally entitled to receive benefits as of January 11, she has been overpaid \$2615.87 in benefits she received for the weeks ending January 17 through March 21, 2015.

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 requirement of the law. As a result, the claimant is responsible for paying back the overpayment.

DECISION:

The representative's January 30, 2015 (reference 01) determination is reversed. The employer discharged the claimant for work-connected misconduct. As of January 11, 2015 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 \$2615.87 in benefits she received for the weeks ending January 17 through March 21, 2015. The claimant is legally responsible for paying back the overpayment.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can