

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE E PARIS
Claimant

APPEAL NO: 14A-UI-11631-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VON MAUR INC
Employer

OC: 04/06/14
Claimant: Respondent (2/R)

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 October 30, 2014 (reference 01) determination that held the claimant qualified to receive benefits and the employer's account could be charged because the claimant had been discharged for non-disqualifying reasons. The claimant participated at the December 1 hearing. Jeri Bryan; Terry Dotson, an Equifax TALX representative; and Christopher Drew, a loss prevention investigator; appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits as of October 12, 2014.

ISSUES:

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

Has the claimant been overpaid benefits she received for the weeks ending October 18 through November 22, 2014?

FINDINGS OF FACT:

The claimant started working for the employer on August 8, 2014. The employer hired her to work as a full-time lunch room associate. The employer's policy informs employees they must pay for food consumed at work and if they do not, they will be terminated. The claimant received a copy of the employer's policy when she was hired.

On October 1 the claimant received a performance evaluation. Her supervisor noted on the evaluation that the claimant needed to pay for food she consumed at work.

Around 12:30 p.m., on October 1, 2014, Drew was in the lunchroom and noticed the claimant take a piece of bacon from the serving line and eat it. He later checked to see if the claimant paid for the bacon. The video of this incident verifies that the claimant took bacon off the line and that she was chewing something. Drew found no evidence that the claimant paid for any bacon on October 1.

The employer discharged the claimant on October 8, 2014 for eating a piece of bacon without paying for it. The claimant denied she ate any bacon on October 1, 2014.

The claimant established a claim for benefits the week of April 6, 2014. She reopened her claim the week of October 12, 2014. She filed claims for the weeks ending October 18 through November 22, 2014. She received her maximum weekly benefit amount of \$199 for the weeks ending October 17 through November 15. She received \$159.54 in benefits for the week ending November 22, 2014.

The employer did not personally participate at the fact-finding interview. The employer provided written information concerning the reasons for the claimant's employment separation.

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. 871 IAC 24.32(1)(a).

This case revolves around the credibility of the witnesses. The evidence indicates Drew had no motive to get the claimant into trouble. The claimant on the other hand has a motive to be less than truthful. The administrative concludes Drew's testimony is more credible than the claimant's. The administrative law judge concludes the claimant took a piece of bacon off the serving line and ate it on October 1, 2014. Since the claimant had previously been warned about eating food without paying for it and her October 1 evaluation warned her to pay for all food she ate, the administrative law judge concludes the claimant intentionally and substantially disregarded the employer's policy. The claimant committed work-connected misconduct. As of October 12, 2014 the claimant is not qualified to receive benefits.

The employer is not one of the claimant's base-period employer's.

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 qualified to receive benefits as of October 12, 2014, and has been overpaid \$1154.54 in 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.

Since the employer presented written information, this matter will be remanded to determine if the employer met the participation requirement and if the claimant is required to pay back the overpayment she received.

DECISION:

The representative's October 30, 2014 (reference 01) determination is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of October 12, 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 is not one of the claimant's base-period employers. The claimant has been overpaid \$1154.54 in benefits she received for the weeks ending October 18 through November 22, 2014.

The issue of whether the employer participated at the fact-finding interview and whether the claimant will be required to pay back the \$1154.54 overpayment is **remanded** to the Benefits Bureau to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can