

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHY KERN
Claimant

APPEAL NO: 08A-UI-06198-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOUR OAKS INC OF IOWA
Employer

OC: 06/01/08 R: 03
Claimant: Respondent (2)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Four Oaks Inc. of Iowa (employer) appealed an unemployment insurance decision dated June 25, 2008, reference 01, which held that Kathy Kern (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 21, 2008. The claimant participated in the hearing. The employer participated through Karen Bruess, Vice-President of Human Resources. Employer's Exhibits One, Two and Three were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed full-time for Family and Children Services from September 30, 1999 through May 27, 2008. She started as a night worker but was a day worker on April 9, 2008 when she took three days of personal leave. The claimant's pregnant daughter went in the hospital on April 8, 2008 with high blood pressure and protein in her urine. She delivered a premature baby on April 12, 2008 but continued to have difficulties with high blood pressure. The claimant worked on April 14, 2008 when she requested a personal leave. She had paid leave through May 8, 2008 and the employer sent her a letter on that date asking when she could return to work. The employer gave her an additional ten days of unpaid leave through May 27, 2008 but denied unpaid leave past that date. The letter advised her that her employment would be ended on May 28, 2008 if she decided not to return to work. The claimant was expecting the letter but did not receive it. She contacted the employer and met with Program Coordinator Greg Gates and Program Manager Travis Meiborg on May 19, 2008. The letter was given to her at that time. The employer asked her when she planned on returning to work but the claimant was unable to give a definite date of return. She said that she did not want to resign but wanted to continue on unpaid leave.

The claimant filed a claim for unemployment insurance benefits effective June 1, 2008 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 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 claimant was discharged when she refused to return to work at the end of her personal paid and unpaid leaves of absence. The employer would have even accepted a future date when the claimant was willing to return but she would not commit to anything. The employer could not continue to hold the claimant's job open when she was unwilling to work. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated June 25, 2008, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,565.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css