

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN SMITH
Claimant

APPEAL NO. 13A-UI-10848-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PER MAR SECURITY & RESEARCH CORP
PER MAR SECURITY SERVICES**
Employer

**OC: 04/21/13
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Per Mar Security & Research Corporation (employer) appealed an unemployment insurance decision dated September 16, 2013, reference 04, which held that Robin Smith (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 October 16, 2013. The claimant participated in the hearing. The employer participated through Supervisor Brandi Saldeen. Employer's Exhibits One through Four were admitted into evidence.

ISSUE:

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

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 as a full-time security guard from May 7, 2013 through July 29, 2013 when she was discharged for leaving her security post without someone to replace her. She was scheduled at Lance Snyder from 10:00 p.m. to 12:00 a.m. to fill in for another employee. Her replacement did not show up and she admits she left at approximately 1:00 a.m. without anyone to replace her. She contends she attempted to call her supervisor but the supervisor has no record of that. The claimant also admits she did not contact management, which is the requirement in case of an emergency. Leaving a security post unattended is an emergency. According to company policy, it is a condition of employment that an employee will remain on post even longer than normal duty tour until a replacement arrives.

The claimant filed a claim for unemployment insurance benefits effective April 21, 2013 and has received benefits after the separation from employment in the amount of \$1,494.00.

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. 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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged for leaving her post unattended in violation of company policy and with a complete disregard of the client's interests. She admitted she left the client company without a security officer on the early morning of July 29, 2013. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. Benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits she has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

In the case herein, the benefits were not received due to fraud or willful misrepresentation and the employer witness did not personally participate in the fact-finding interview. However, the employer representative sent in detailed written documentation which contained factual information regarding the reasons for the discharge. In accordance with the Agency definition of participation, the employer participated in the fact-finding interview and its account is not subject to charge. See 871 IAC 24.10. Consequently, a waiver cannot be considered and the claimant is responsible for repaying the overpayment amount of \$1,494.00.

DECISION:

The unemployment insurance decision dated September 16, 2013, reference 04, 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 was overpaid benefits in the amount of \$1,494.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs