

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRIEAPHANY L BONDS**  
Claimant

**APPEAL NO. 10A-UI-12294-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LUTHER CARE SERVICES**  
Employer

**OC: 07/25/10**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated August 23, 2010, reference 01, that concluded the claimant was discharged for work-connected misconduct. A telephone hearing was held on October 18, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Reba Larson participated in the hearing on behalf of the employer with a witness, Terell LaMay.

**ISSUES:**

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked as a night cook for the employer from March 7, 2007, to July 26, 2010. The employer had warned the claimant on February 3, 2010, about not performing her tasks. She was warned about not punching out on the time clock on February 9 and for punching in early on March 1. She was warned about a conflict with a coworker on April 1. She was given a three-day suspension after arguing with her supervisor about her job duties.

On July 17, 2010, the claimant and a coworker called a tow truck company and told the company that a car belonging to another worker needed to be towed. The car was being towed and the worker had to leave work to stop the car from being towed. The claimant did this as a joke on the worker.

The employer discharged the claimant on July 19, 2010, based on her disciplinary history and her conduct in calling the tow truck company.

The claimant filed for and received a total of \$1,118.00 in unemployment insurance benefits for the weeks between July 25 and August 21, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The fact that the claimant intended it as a joke does not change anything. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated August 23, 2010, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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