

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY E MILES
Claimant

APPEAL NO. 09A-UI-11928-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SECURITAS SECURITY
SERVICES USA INC**
Employer

**Original Claim: 07/12/09
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Securitas Security Services USA, Inc. (Securitas) filed an appeal from a representative's decision dated August 10, 2009, reference 01, which held that no disqualification would be imposed regarding Kelly Miles' separation from employment. After due notice was issued, a hearing was held by telephone on September 2, 2009. Ms. Miles participated personally and offered additional testimony from Abe Brown. The employer participated by Brian Chatham, Human Resources Manager; Rian Rasmussen, Branch Manager; and Stacey Cooney, Scheduling Manager. The employer was represented by Barb Hamilton of TALX Corporation.

ISSUE:

At issue in this matter is whether Ms. Miles was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Miles was employed by Securitas from November 4, 2008 until May 20, 2009 as a full-time security officer. She was at all times assigned to work at Primera Foods. She was discharged for falsifying her time and attendance report for May 19, 2009.

Ms. Miles was scheduled to work from 6:00 p.m. on May 19 until 6:00 a.m. on May 20. At 10:02 p.m. on May 19, the director of operations at Primera Foods sent an email to Securitas indicating that there was no guard on duty when he left the facility at 7:35 that evening. He further indicated that he had called just prior to sending the email and that Ms. Miles answered. Stacey Cooney contacted Ms. Miles and she confirmed that she worked from 1800 until 0600 on May 19. The hours were repeated back to her and she confirmed them as accurate.

Rian Rasmussen and Brian Chatham called Ms. Miles on May 20 and again questioned her regarding the hours she worked on May 19. At that time, she indicated her arrival time as 1900. She indicated that a coworker directed her to report her time inaccurately. She indicated during the hearing that she arrived at 8:00 p.m. on May 19. As a result of her falsification, Ms. Miles was discharged on May 20, 2009.

Ms. Miles filed a claim for job insurance benefits effective August 10, 2009. She has received a total of \$783.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Miles was discharged for providing false information to the employer regarding her work hours. She indicated on her shift report that she started work at 6:00 p.m. and confirmed this start time with Ms. Cooney on May 20. She later told the employer that she arrived at 7:00 p.m.

Ms. Miles clearly provided false information on the shift activity report for May 19. She had the opportunity to correct the information when speaking to Ms. Cooney on May 20, but did not do so. It was only later in the day on May 20 that she acknowledged that the report was false and that she had arrived at 7:00 p.m. However, this would not explain why she was not on duty when the director of operations left at 7:35 p.m. It was not until the hearing that she indicated she did not arrive until 8:00 p.m.

Ms. Miles told the employer that a coworker told her to falsify her report. It was her obligation, not the coworker's, to provide truthful and accurate information. Ms. Miles deliberately and intentionally provided false information to her employer, which was contrary to the type of behavior an employer has the right to expect. Her false report would mislead Primera Foods regarding the level and extent of guard services being provided, thus jeopardizing Securitas' business relationship. For the reasons cited herein, it is concluded that disqualifying misconduct has been established and benefits are denied.

The fact that Ms. Miles may have been at the job site covering for another employee or that she may have told someone she was switching shifts with another guard is irrelevant to the issue of whether her paperwork was accurate. Whatever reason she had for being on site, it was expected that she would accurately report her activities. She failed to do so and did not avail herself of the opportunity to correct false information.

Ms. Miles has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated August 10, 2009, reference 01, is hereby reversed. Ms. Miles was discharged by Securitas for misconduct in connection with her employment. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Miles will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw