

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA PIKE**  
Claimant

**APPEAL NO: 11A-UI-13084-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APAC CUSTOMER SERVICES**  
Employer

**OC: 09/11/11**  
**Claimant: Respondent (2/R)**

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

**STATEMENT OF THE CASE:**

Apac Customer Services, Inc. (employer) appealed an unemployment insurance decision dated September 29, 2011, reference 01, which held that Patricia Pike (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 25, 2011. The claimant participated in the hearing. The employer participated through Dennis Mau, IT Manager and Pat McNicol, Employer Representative. Employer's Exhibits One through 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 claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**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 computer operator from August 19, 1996 through August 10, 2011 when she was discharged for refusing to follow directives. She was placed on a first final warning on December 23, 2009 and a second final warning on January 4, 2010 for repeatedly failing to follow protocol even though she knew what to do. The claimant worked from 7:00 p.m. to 7:00 a.m. and was responsible for ensuring no files or equipment went down.

The employer sent the Network Operations Center (NOC) team an email on June 2, 2011 advising them it was their responsibility to support the Transmaster and to deal with ABENDS, which is an abnormal termination of software. The claimant was specifically asked in this email if she needed any training and was advised that a response was required. IT Manager Dennis Mau testified that the claimant made no request for training. Mr. Mau sent another email dated June 30, 2011 announcing that the NOC team was now tasked with all the Transmaster duties

and the claimant again did not ask Mr. Mau any questions. There was a NOC meeting on July 27, 2011 in which the Transmaster is mentioned twice and printed copies were distributed to everyone prior to the meeting. The claimant did not ask for assistance and did not ask any questions in this meeting.

The claimant worked the night of July 31, 2011 when a file transfer to a client failed at 7:46 p.m. She noticed the incident and emailed Austin Stall on the Client Engineering Team. Mr. Stall emailed her back at 7:58 p.m. and said that it was due to an ABEND, which is not something over which he had any control. The claimant wrote back at 8:03 p.m. that she did not see the ABEND but only an error in process. She failed to take any further action to resolve the problem even though she had the document used to manage the process. This document, TRN\_2490, provides step by step instructions on how to manually correct the abended transmission.

The claimant could have also checked the "Hyperquality" account on CRFTP and looked at the transitory directory on the Transmaster. If the file is missing, she was then to inform the client engineer on-call with the proper data to save time. In addition to not following these printed out steps, the claimant failed to note the incident in the Ops Daily Log for her peers to be made aware of the issue. Consequently, the issue had still not been resolved by 2:01 p.m. on August 1, 2011. Finally another employee was able to resolve the problem at 3:32 p.m. that day but no sales had been processed to that client. The claimant was subsequently discharged for her continued failure to follow established processes and fulfill key responsibilities.

The claimant filed a claim for unemployment insurance benefits effective September 11, 2011 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 on August 10, 2011 for repeatedly refusing to follow directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant was on her third and final warning for failing to consistently follow processes when she failed to take action regarding a file transfer failure which was detrimental to the employer's business interests.

The claimant repeatedly demonstrated an intentional and substantial disregard of the employer's interests and of her duties and obligations to the employer. Her refusal to follow directives shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee. 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 that benefits must 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

#### **DECISION:**

The unemployment insurance decision dated September 29, 2011, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css