

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER K JONES-GAHAGAN
Claimant

APPEAL NO. 08A-UI-01818-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GREAT CARE QUAD CITIES LLC
GREAT CLIPS**
Employer

**OC: 01/20/08 R: 04
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated February 13, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 27, 2008. The claimant participated. The employer participated by John Slavens, Co-Owner and James Todd Linden, Assistant Manager. Employer's Exhibits One through Eighteen and Claimant's Exhibits A and B were received into evidence.

ISSUES:

The issues in this matter are whether the claimant was discharged for misconduct in connection with her work and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from July 2002 until December 9, 2007 when she was discharged from employment. Ms. Jones-Gahagan last held the position of general manager overseeing three salons for the company and was paid by salary. Her immediate supervisor was company co-owner, John Slavens.

The claimant was discharged following an incident that triggered her separation from employment that had occurred on December 7, 2007. On that date the claimant was scheduled to work and reported in what a number of other individuals present considered to be an intoxicated condition. Mr. Linden, an assistant manager, was called by personnel to come to the facility. Mr. Linden witnessed the claimant stumbling, smelling of alcohol, arguing on the telephone with an unnamed individual and making what Mr. Linden considered to be a personal advance to him. Based upon the reasonable conclusion of individuals that were present Ms. Jones-Gahagan was advised to return home and not to attempt any further company business that day. The claimant did not report for work the following day indicating that she could not report due to an "eye infection."

The employer had become generally dissatisfied with Ms. Jones-Gahagan performance for a number of reasons and had issued a generalized warning and set of expectations to the claimant on November 13, 2007. Based upon the allegations made by individuals who were present, a meeting was scheduled for Sunday, December 9, 2007. Shortly before the meeting Ms. Jones-Gahagan indicated that she would not be reporting because she felt "a cough coming on." Subsequently, the claimant was discharged by telephone.

It is the claimant's position that she was not intoxicated on the day in question but was suffering from the "flu" and that statements made by individuals who were present were untruthful and in effect part of a conspiracy to have her discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the claimant's discharge took place under disqualifying conditions. It does. The evidence in the record clearly establishes that Mr. Jones-Gahagan reported to work on Friday, December 7, 2007 in a condition that showed a disregard for the employer's interests and standards of behavior. Individuals who were present witnessed the claimant's conduct and reported that the claimant appeared to be intoxicated, smelled of alcohol, was stumbling and loudly arguing with an unidentified individual on the telephone. Individuals who were present further reported that the claimant attempted to disseminate some prescription drugs and made personal statements to Mr. Linden that he found offensive. James Todd Linden appeared personally and provided sworn testimony confirming that the claimant smelled of alcohol and based upon his previous personal experiences reasonably concluded that the claimant was intoxicated on that date.

Iowa Code section 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.

For the reasons stated herein the administrative law judge concludes that the employer through a preponderance of the evidence has proven disqualifying misconduct on the part of this claimant. Unemployment insurance benefits are withheld.

Iowa Code section 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. The claimant is overpaid benefits in the amount of \$3,240.00.

DECISION:

The representative's decision dated February 13, 2008, reference 01, is hereby reversed. The claimant was discharged for misconduct in connection with her work. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, providing that she is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$3,240.00

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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