

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOMINQUE U STEWART
Claimant

APPEAL NO. 12A-UI-07496-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AT&T MOBILITY SERVICES LLC
Employer

**OC: 05/13/12
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 June 13, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 17, 2012. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Amelia Gallagher participated in the hearing on behalf of the employer with witnesses, Ryan Ingersoll and Susan Collins. Exhibits E-1 through E-12 were admitted into evidence.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as a customer service representative from October 31, 2011, to May 15, 2012. She was informed and understood that under the employer's work rules, employees were not allowed to access their personal accounts for any reason and were not allowed to access an account of a family member, friend, or coworker without a supervisor's permission.

The claimant willfully violated the employer's work rules by accessing her and her mother's personal mobile phone accounts multiple times from January 1 through April 2, 2012. This included adding an insurance feature that she was not eligible for on February 8, 2012, and making an equipment change on March 15, 2012.

Around April 2, 2012, an area manager discovered the claimant had been accessing her and her mother's account. The claimant was questioned about this on April 3 and admitted she had accessed the accounts and added the insurance but denied making the equipment change. The matter was investigated by loss prevention. In a report dated April 26, the claimant was found to have committed all the violations alleged, including the equipment change.

The claimant was discharged for violating the employer's account access rules on May 15, 2012. The delay in taking disciplinary action was due to the careful investigation that was done and the discharge review process that requires multiple managers to review the proposed action. The claimant knew that her conduct was in the process of being investigated after April 3, 2012.

The claimant received \$1,807.00 in unemployment insurance benefits from May 13 to August 11, 2012.

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 violation of a known work rule 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue is whether the claimant was discharged for a current act of misconduct. The unemployment insurance rules provide: "While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act." 871 IAC 24.32(8)

This view is supported by the Iowa Court of Appeals' interpretation of this rule in *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa Ct. App. 1988), the court ruled that to determine whether conduct prompting the discharge constitutes a disqualifying current act, the decision maker must consider the date on which the conduct came to the employer's attention and the date on which the employer notified the employee that the conduct provided grounds for dismissal. Any delay in taking action must have a reasonable basis. The court decided that the three-day delay between final act and notice of possible dismissal was not unreasonable. *Id.* at 662.

In this case, the employer became aware of the conduct on April 2 and the claimant knew the next day that the matter was being investigated to determine what disciplinary action was warranted. As a result, the employer has met the test to show a current act of misconduct.

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 June 13, 2012, 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.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs