

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKI S ZIMMERMAN
Claimant

APPEAL NO: 15A-UI-01733-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARROLL CO COUNCIL FOR
THE PREVENTION OF CHILD ABUSE**
Employer

**OC: 01/11/15
Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.3(7) – Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's January 30, 2015 (reference 01) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant was called for the April 9 hearing but was not available for the hearing. A message was left for her to contact the Appeals Bureau immediately. She did not respond to the message left for her. Dani Steinkamp, the claimant's supervisor, and Lou Ann Mowry, the executive director, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUES:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

Has the claimant been overpaid any benefits?

If the claimant has been overpaid benefits, is she required to pay back the overpayment or will the employer's account be charged for the overpayment?

FINDINGS OF FACT:

The claimant started working for the employer as a full-time employee in January 2014. The claimant worked directly with members. Part of her job duties required her to help members learn how to act appropriately with other people. The employer requires employees to treat all members with dignity and respect.

During her employment, the employer talked to the claimant several times about the way she talked to members. The employer received reports the claimant that she talked and treated members rudely. After talking to the claimant about respecting members, there were still reported problems. The employer then gave the claimant a written warning on November 25, 2014. The November 25 written warning informed the claimant that she had to change the way she talked to members by a certain date or she would be discharged.

On January 10, 2015, a member asked the claimant why she was smoking in the presence of members. The claimant became upset and did not know the member recorded her response, "God what's up your ass today?" This member had complained before about the way the claimant talked to him; which he did not like or appreciate. The member did not believe the claimant's response to his question was appropriate and reported the January 10 incident to the employer.

The employer talked to the claimant on January 13 about the member's complaint. The employer played the recording the member had made of her response to him. The claimant said nothing in her defense. The employer discharged the claimant on January 13, 2015; for treating and talking to members disrespectfully. The claimant violated the member's rights when she talked to him rudely and inappropriately. The claimant also violated a policy when she smoked in the presence of members.

The claimant established a claim for benefits during the week of January 11, 2015. She filed claims for the weeks ending January 17 through April 4, 2015. She received a total of \$3761 in benefits for these weeks. When the fact-finding interview was held, the employer attempted to participate but was only able to leave a message. The fact-finder did not contact the employer before issuing the January 30, 2015 determination.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer warned the claimant that she needed to speak and treat members respectfully at least two times prior to January 10, 2015. The claimant knew or should have known her job was in jeopardy when she received the November 25, 2014 written warning. In this warning the employer told her she needed to immediately change the way she talked to members or she would be discharged.

The member who recorded the claimant on January 10 had complained before about the way the claimant talked to him. So the employer knew he was not making up an unfounded complaint, he recorded the claimant's response when he questioned why she was smoking in front of members. This was a violation of the employer's policy. The claimant became upset at the member's question and responded disrespectfully. She was not only rude but her comment was inappropriate. The claimant committed work-connected misconduct on January 10, 2015. As of January 11, 2015 the claimant is not qualified to receive benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7). Based on this decision, the claimant is not legally entitled to receive benefits for the weeks ending January 17 through April 4, 2015. She has been overpaid \$3761 in benefits she received for these weeks.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)a, b. The facts establish the employer attempted to participate at the fact-finding interview, but was unable to talk to a claims specialist. Under these facts, the issue of whether the employer satisfied the participation requirement or had legal excuse for not satisfying the participation requirement will be remanded to the Benefits Bureau to determine. If the employer did not satisfy the participation requirement, the claimant will not have to pay back the overpayment she received and the overpayment will be charged to the employer's account. If the employer satisfied the participation requirement or established a legal excuse for not participating, then the claimant will be required to pay back the overpayment.

DECISION:

The representative's January 30, 2015 (reference 01) determination is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of January 11, 2015 the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible.

The claimant has been overpaid \$3761 in benefits she received for the weeks ending January 17 through April 4, 2015. The issue of whether the employer satisfied the participation requirement of the law is **remanded** to the Benefits Bureau to determine. The Benefits Bureau will also decide if the claimant is required to pay back the overpayment or if the employer's account will be charged for the overpayment.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

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