

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DILLON ARMSTRONG
Claimant

GOOD SAMARITAN SOCIETY INC
Employer

APPEAL NO. 14A-UI-10407-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/07/14
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Good Samaritan Society, Inc. (employer) appealed an unemployment insurance decision dated September 26, 2014, (reference 01), which held that Dillon Armstrong (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 27, 2014. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Michelle Runyon, Dietary Director. Employer's Exhibits One and Two were admitted into evidence.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a part-time dietary assistant from August 28, 2012, through September 9, 2014, when he was discharged due to repeated insubordination. Employees are not allowed to carry their cell phones while working but on September 7, 2014, the claimant not only had his cell phone but was using it and refused to end his telephone call when directed to do so by his supervisor. He said that he had to talk to his friend about what time he needed to report to his second job. Shortly thereafter, the claimant again used his cell phone for a personal call and again disregarded the supervisor's director to stop using it. This time he justified his conduct by stating he was talking to his grandmother. The employer's policy provides that emergency phone calls must go through the main office. He previously received a written warning on July 25, 2014, when he failed to follow a resident's care plan. The claimant served thin liquids to a resident when the care plan required the resident receive thickened liquids.

The claimant filed a claim for unemployment insurance benefits effective September 7, 2014, and has received benefits after the separation from employment in the amount of \$260.00. The employer witness knew nothing about the fact-finding interview. The fact-finder indicated the employer submitted written documentation but no evidence was provided as to what was contained within the documentation.

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 him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1). The claimant was discharged on September 15, 2014, for repeated insubordination. Situations involving alleged insubordination must be reviewed by evaluating the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa App. 1985). There was no legitimate reason for the claimant to violate company policy by using his cell phone while working.

The claimant's insubordination shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant received \$260.00 in unemployment benefits. The benefits were not received due to fraud or willful misrepresentation and the employer witness did not participate in the fact-finding interview. Consequently, the overpayment is waived and the employer's account continues to be subject to charge.

DECISION:

The unemployment insurance decision dated September 26, 2014, (reference 01), is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$260.00 but the overpayment is waived and the employer's account is subject to charge for benefits paid.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs