

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA M BAUGH

Claimant

APPEAL NO. 12A-UI-12327-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STORY COUNTY MEDICAL CENTER

Employer

OC: 09/09/12

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Story County Medical Center (SCMC), filed an appeal from a decision dated October 3, 2012, reference 01. The decision allowed benefits to the claimant, Lisa Baugh. After due notice was issued a hearing was held by telephone conference call on November 8, 2012. The claimant participated on her own behalf. The employer participated by Director of Human Resources Kaylee Siebrecht, Director of Senior Care Services Beth Rehbein, Receptionist Nicole Carlson, and Chief Nursing Officer Gale Herrara.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Lisa Baugh was employed by SCMC from July 10, 2006 until September 11, 2012 as a full-time CMA. She had been granted FML for alcohol rehab to run from June 5 through 18, 2012. In fact, she did not check in to rehab until June 8, 2012, and spent only one day. She was arrested for a second OWI on June 10, 2012, and was incarcerated until the next day. She did not go back to rehab but remained off work June 19, 2012.

On June 19, 2012, she came to work and immediately announced to the two charges nurses she was “in no condition to work.” The nurses noted a strong smell of alcohol and that she had bloodshot eyes. She was suspended for three days.

On July 13, 2012, she signed a “communication agreement” to notify the employer immediately of the progress of her OWI case. That agreement also informed her that her job status might change after the OWI matter was resolved depending on the findings and DHS regulations.

On August 28, 2012, she was asked to come in a fill out a form allowing the employer to do a new background check. She did not come in until August 30, 2012. She approached Receptionist Nicole Carlson, who noted a strong smell of alcohol, bloodshot eyes, and slurred speech by the claimant. After asking to meet with Director of Senior Care Services Beth

Rehbein, Ms. Baugh sat down and sprayed herself liberally with perfume. At that meeting, she said she would be serving additional time for the second OWI. The employer asked her to provide a phone number and name of a person who could be contacted if the claimant needed to be reached. She did not do so.

After this incident, the employer met with the CEO and the company attorney about the incidents. The decision was made to discharge her, but due to the fact she was in jail and had not provided a contact name and number, the company had to wait until she was released from jail before notifying her on September 11, 2012, she was discharged.

By appearing for work on June 19, 2012, under the influence of alcohol, failing to meet the communication requirements of the July 13, 2012, agreement and then appearing at the facility on August 30, 2012, under the influence of alcohol, she violated the code of ethics. In addition, she falsified the FML request by spending only one day in rehab, being arrested for intoxication the day after her one-day stay in rehab, and then taking the rest of the time off without a legitimate medical reason.

Lisa Baugh has received unemployment benefits since filing a claim with an effective date of September 9, 2012.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant was discharged for violation of known company rules and code of conduct. She appeared for work under the influence of alcohol once, was in the hospital a second time as an employee, though not on duty, also under the influence. She was arrested for OWI while on FML, instead of being in rehab, which was the purpose for the leave. In addition, there was a failure to keep the employer apprised of her situation and provide a contact person while she was incarcerated, even though she agreed to do so at the employer's request.

Ms. Baugh showed a disregard for the reputation of the employer, though required to do so by the code of conduct, by appearing drunk in the hospital. She falsified the reason for her FML and refused to abide by agreements and rules. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of October 3, 2012, reference 01, is reversed. Lisa Baugh is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw