

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRITTANY YOUNG
Claimant

APPEAL NO. 13A-UI-09983-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 07/28/13
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Care Initiatives (employer) appealed an unemployment insurance decision dated August 20, 2013, reference 01, which held that Brittany Young (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 10, 2013. The claimant participated in the hearing. The employer participated through Administrator Brianna Sturm and Alyce Smolsky, Employer Representative. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time certified nursing assistant from August 16, 2012 through June 3, 2013 when she was discharged for violation of company policy and failing to comply with a final warning. The employer's safety policy requires that, "All safety incidents (no matter how minor) must be immediately reported to the supervisor. Employees are then required to complete an Employee Incident Report and Employee Statement **by the end of their shift.**" The claimant received a final written warning and suspension on November 27, 2012 for failing to timely complete an incident report. The work injury occurred on November 15, 2012 but the claimant did not complete the incident report until November 26, 2012.

The final warning directed her to fill out any and all employee injury incidents before the end of her shift and her failure to do so would result in her termination. The administrator saw the claimant trip and fall in the dining room on May 30, 2013. The claimant denies falling but admits she tripped. The administrator gave her time to complete the incident report but she failed to do so by June 3, 2013 and was discharged as a result.

The claimant filed a claim for unemployment insurance benefits effective July 28, 2013 and has received benefits after the separation from employment in the amount of \$2,130.00.

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 the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the 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). The claimant was discharged on June 3, 2013 for violation of company policy and failure to comply with her final written warning. Regardless of how the claimant personally feels about this particular policy she was required to follow it and was advised that failure to do so would result in her termination. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. Benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits she 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.

In the case herein, a waiver cannot be considered because both parties participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount of \$2,130.00.

DECISION:

The unemployment insurance decision dated August 20, 2013, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,130.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs