

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RENEE ARKU
Claimant

APPEAL NO. 09A-UCFE-00016-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE
Employer

**Original Claim: 06/28/09
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 July 31, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 24, 2009. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Angie Pettinger participated in the hearing on behalf of the employer.

ISSUE:

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 from August 7, 1993, to June 30, 2009. The claimant was placed on a disciplinary leave without pay on June 30, 2009, because the employer believed she had been overcharging customers for postage, putting the correct postage on packages after the customers left the post office, and keeping the difference. An audit disclosed at least \$300.00 missing and the investigation concluded the claimant had overcharged customers while putting the correct postage on the mail items. As a result, the employer proposed the claimant's removal. The claimant filed for unemployment insurance benefits effective June 28, 2009, after being placed on disciplinary leave.

The claimant filed for and received \$361.00 in unemployment insurance benefits for the week ending July 11, 2009.

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. Under the unemployment insurance rules, a disciplinary suspension is to be treated at a discharge. 871 IAC 24.32(9).

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 conduct 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 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 July 31, 2009, 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/kjw