

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JILL SPARKS**

Claimant

**APPEAL NO: 14A-UI-03310-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**

Employer

**OC: 03/02/14**

**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct

Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 20, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 17, 2014. The claimant participated in the hearing. Dave Burgeon, Human Resources Director; Glenda Eubanks, Nurse Manager for the Urology Department; and Mary Eggenburg, Benefits Specialist; participated in the hearing on behalf of the employer. Employer's Exhibits One through Five were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time central services technician I for The University of Iowa from March 28, 1994 to February 26, 2014. She was discharged after being warned and suspended for inappropriate behavior toward her manager and co-workers.

On December 12, 2013, the claimant received a written warning and three-day suspension for unprofessional behavior toward her manager and co-workers. On November 19, 2013, Nurse Manager Glenda Eubanks spoke to the claimant about the preparation of Cidex solution, which is used to disinfect instruments in the clinic, and the claimant became agitated and began yelling at Ms. Eubanks after Ms. Eubanks asked her about the Cidex. The claimant also sarcastically mimicked Ms. Eubanks. The incident took place in a common hallway where other employees, and potentially patients, could hear the claimant speaking disrespectfully and loudly to Ms. Eubanks. The claimant then walked away from Ms. Eubanks, mumbling, without providing an answer to her question.

On November 21, 2013, Ms. Eubanks approached the claimant in the cleaning supply room regarding physician concerns reported to her about the preparedness of scopes. The door to

the room was closed and the claimant again became very loud and agitated and Ms. Eubanks asked her to lower her voice twice. The claimant walked away from Ms. Eubanks, who was still attempting to speak to her, mumbling, and went to the break room. Once there the claimant began complaining loudly about Ms. Eubanks and a co-worker to two other staff members. She indicated Ms. Eubanks was requiring her to perform tasks outside of her job description, blamed a co-worker for a situation the claimant was responsible for and stated Ms. Eubanks was not fair to her. The tone of the conversation from the claimant was very negative. Another staff member reported the situation to Ms. Eubanks who entered the break room after also hearing the claimant talking loudly and observed from the claimant's body language, viewed through the window of the break room, the claimant was upset and loud and it was not a "positive" conversation. She told the claimant to stop.

On January 6, 2014, the claimant received a written warning and a five-day suspension for disrespectful behavior to Ms. Eubanks after Ms. Eubanks observed her talking to two clerks in the checkout area next to the patient waiting room where three patients/family members were waiting. The claimant was loudly complaining about an email she received from Ms. Eubanks, who heard the claimant from her office 25 to 30 feet away. The warning stated the claimant needed to "demonstrate civil and respectful behavior to her co-workers and supervisor" (Employer's Exhibit Two).

On February 14, 2014, the VA Hospital returned an instrument tray. The claimant "decontaminated it and left it on the drying table in the Dirty Supply room. (The claimant's co-worker) Arnulfo Castaneda asked (the claimant) about the instrumentation and where the tray that the Continuous Flow Resectoscope belong in" (Employer's Exhibit Three). The claimant told him that was all they received back from the VA and did not conduct any follow-up to find the tray. That afternoon Mr. Castaneda asked the claimant about the instruments again and she stated, "That's what I said this morning, isn't it? This is what they brought back this morning, just like I told you" (Employer's Exhibit Three). Mr. Castaneda explained he was simply trying to confirm it was missing before he reported the equipment missing to Ms. Eubanks. He then stated "that the item was expensive, we needed it and that what I asked wasn't too difficult to answer. She then said, 'Don't be such an asshole,' and then laughed as she walked away" (Employer's Exhibit Three). Mr. Castaneda reported the situation to Ms. Eubanks. She approached the claimant about her tone of voice toward Mr. Castaneda and she admitted she did not speak to him in the same tone with which she was speaking to Ms. Eubanks and had spoken to another employee. Ms. Eubanks asked the claimant how she communicated with Mr. Castaneda and she replied, "Not at all" (Employer's Exhibit Three). When Ms. Eubanks asked her why, the claimant stated because, "He lies, doesn't do what I ask him to do, I have lists," and proceeded to give examples (Employer's Exhibit Three). Ms. Eubanks asked the claimant if Mr. Castaneda was properly oriented and the claimant stated, "Yes. He knows how to do things but then doesn't. (Ms. Eubanks) asked, 'Do you help him?'" (The claimant) replied, "He didn't ask" (Employer's Exhibit Three). She made various other comments about Mr. Castaneda and teamwork before ending the conversation by saying, "But that isn't the only thing that will help with teamwork, he (Mr. Castaneda) likes to watch women work" (Employer's Exhibit Three).

On February 17, 2014, Ms. Eubanks conducted her investigation of the past incidents involving the claimant as well as the most recent occurrence February 14, 2014. Ms. Eubanks was then out on a scheduled vacation until February 26, 2014. After discussing the matter with human resources Ms. Eubanks notified the claimant her employment was terminated February 26, 2014, due to failure to demonstrate civil and respectful behaviors toward Ms. Eubanks and co-workers (Employer's Exhibit Four).

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant repeatedly showcased a negative, disrespectful and inappropriate attitude and behaviors toward at least one co-worker and Ms. Eubanks, despite being warned about her conduct. Regardless of whether the claimant agrees with her supervisor's instructions, she has a responsibility to follow those directives, assuming same are not unlawful, intolerable or detrimental, none of which were the case on any of the occasions described by Ms. Eubanks and the claimant. During the appeal hearing, the claimant also displayed some of the same attitudes and behaviors the employer spoke of, with many of her answers seeming flippant in nature, although it is possible her behavior could be attributable to the claimant being nervous with regard to the hearing.

The claimant was often rude, defensive, loud and negative at work when speaking to or about her supervisor, Ms. Eubanks, and some of her co-workers, and walked away from Ms. Eubanks

when she was talking directly to her on at least two occasions, mumbling under her breath. She also mimicked some statements made by Ms. Eubanks during their meetings. The claimant was a 20-year employee of the University and it is a shame her employment ended in this manner. As a 20-year employee who had received two warnings and at least two suspensions since December 12, 2013, however, the claimant could surely understand and recognize what constituted unacceptable behavior.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

871 IAC 24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period

of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

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 claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

The employer was present during the fact-finding interview in this case and was able to answer specific questions about the claimant's separation and offered rebuttal to the claimant's statements. The employer's actions with regard to the fact-finding interview rise to the level of participation as that term is defined by Iowa law. Therefore, the claimant's overpayment of benefits in the amount of \$2,040.00 cannot be waived and must be repaid by the claimant rather than charged to the employer's account.

**DECISION:**

The March 20, 2014, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 \$2,040.00.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/pjs