

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE L WILSON**  
Claimant

**APPEAL NO: 12A-UI-12218-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HYPRO INC**  
Employer

**OC: 09/09/12**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated October 1, 2012, reference 01, that held the claimant was not discharged for misconduct on September 11, 2012, and benefits are allowed. A telephone hearing was held on November 6, 2012. The claimant did not participate. Cindy Baumeister, Corporate HR Director; Karen Touve, Corporate HR Coordinator; Angie Maus, Cedar Falls HR; and Travis Frush, Cedar Falls Plant Manager, participated for the employer. Employer Exhibits 1 – 4 with Attachment A was received as evidence.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with employment.

Whether claimant is overpaid unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on December 19, 2011, and last worked for the employer as a full-time basic machine operator at the Cedar Falls, Iowa plant facility on September 11, 2012. She received the employer policies in an employee handbook. She was issued a final written warning on July 10, 2012 for failing to follow instructions and training directives. She was put on notice a further incident could lead to employment termination.

One of claimant job duties is to record a work-in-progress (WIP) daily document for her work product. It requires claimant to make a visual inspection of her work product to see it meets production specifications. In early September 2012, the employer noted some defective product that caused it to review the production period from August 9 through September 4. The employer had provided claimant and other machine operators with #R259559 (Attachment A) that provides the product specifications.

During the investigative review, the employer noted claimant had falsified her August 30 WIP by certifying the product she produced met specifications. A visual inspection of the product showed it did not. When confronted by the employer on September 11, claimant had no explanation for her conduct. She was discharged by the employer for falsification of a work record in light of the final warning.

Claimant failed to respond to the hearing notice. Claimant has received benefits on her unemployment claim.

### **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 administrative law judge concludes the employer has established claimant was discharged for misconduct in connection with employment on September 11, 2012.

The employer issued claimant a recent final written warning that put her on notice her job was in jeopardy for failing to follow work instructions. Her falsification of a work production record is a recent act of misconduct that constitutes job disqualifying misconduct in light of the final warning.

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.

Since claimant has been denied benefits in this matter, the overpayment issue is remanded to claims for a decision.

**DECISION:**

The department decision dated October 1, 2012, reference 01, is reversed. The claimant was discharged for misconduct on September 11, 2012. Benefits are denied until the claimant has worked in and is paid wages for insured work, equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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