

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHANEL T NORD**  
Claimant

**APPEAL NO. 13A-UI-12377-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IA DEPT OF HUMAN SVCS/GLENWOOD**  
Employer

**OC: 10/06/13**  
**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 October 28, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 16, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Michael Murphy. Sandy Linsin participated in the hearing on behalf of the employer with witnesses, Pam Stipe, Doug Wise, Brenda Rainey, and Karen Stafford. Exhibits One through Four were admitted into evidence at the hearing.

**ISSUES:**

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 as a residential treatment worker from September 27, 2010, through September 3, 2013. She was informed and understood that under the employer's work policy, employees were to conduct themselves in a manner to create respect and dignity for the employer and were prohibited from unethical or illegal conduct on or off duty that would have the potential to affect the department. Under the policy, employees have the duty to report unethical or illegal activity relating to state employment to the employer. Specifically, employees were required to report within 24 hours a charge, arrest, or conviction of any felony or misdemeanor. The policy also prohibits employees from making false or misleading statements to the employer and requires employees to cooperate during any investigation.

Around 1 a.m. on August 31, 2013, police discovered the claimant in a road ditch in a highly intoxicated condition. She was combative with police and emergency care providers who were trying to help her. She ended up being taken to a medical facility and released without being charged with any crimes.

The claimant was scheduled to work from 2 p.m. to 10:30 p.m. on August 31. She was late for work that day but finished her shift. She did not inform any supervisor about what had happened early that day because she had not been arrested or charged.

The claimant was stopped by police at about 2 a.m. on September 1, 2013, for a stop sign violation. The officer believed that she was operating a vehicle under the influence of alcohol based on signs of intoxication she exhibited. She was transported to jail. She refused testing for alcohol when she got to jail. Her driver's license was suspended for refusing test but she was allowed a permit to drive for 10 days. She was lodged in jail overnight and the next day appeared before a magistrate for an initial appearance. The magistrate informed her that she had been charged with operating a vehicle while intoxicated, harassment, assaulting a police officer, and two counts of assault on an emergency care provider. She was provided the complaint on the OWI charge and a record of initial appearance that listed her charges. The assault charges were based on what happened on August 31.

The claimant was scheduled to work from 2 p.m. to 10:30 p.m. on September 1. She was released from jail at about 1:30 p.m. She called in and notified the employer that she was going to be late for work due to personal reasons. She came to work around 3:40 p.m.

After she reported to work on September 1, residential treatment supervisor Karen Stafford and another supervisor questioned the claimant about her reporting to work late. Stafford reminded the claimant of the work rule about cooperating in the investigation and not withholding any information. When asked if she wanted to say anything about why she was late, she responded no. Stafford then asked if there was a reason why she was late for work. The claimant replied that it was personal and she did not know that Stafford needed to know why. The other supervisor said that they had heard that she was arrested. The claimant then responded that she was in ICU. Stafford asked her when that happened, and the claimant said the other day after some marital issues. Again, the other supervisor said they had heard she was arrested, and Stafford said she couldn't withhold any information from them. The claimant asked if she had to tell them why she was arrested. Stafford and the union steward who was present confirmed that she needed to tell explain any arrests or charges. The claimant then admitted she got an OWI and got out of jail shortly before she called in. She also admitted she had some paperwork for the charges she had against and she was told that she would need to bring it in. The claimant then prepared and signed a written statement that said she had been pulled over for a stop sign violation and was ticketed for an OWI. The claimant later when home and brought in the OWI complaint. At that point, she was allowed to return to work. She never said anything about being charged with assault. If she had, the employer would not have allowed her to return to work.

When she reported to work on September 3, 2013, she was suspended pending an investigation. The claimant had brought in the OWI complaint, the record of initial appearance that listed all the charges, appointment of counsel papers, and bond receipt that listed the charges as OWI, harassment, and three counts of a police officer. When asked why she had not reported the other charges when Stafford questioned her, she said she wanted to inform the treatment program administrator, Doug Wise, about all the charges. The claimant had not reported the charges to Doug Wise.

After the investigation was completed, the employer discharged the claimant on September 18, 2013, for failing to properly report the charges, not being honest in the investigation, driving on the employer's property without a valid license, and being insubordinate to management.

The claimant filed for and received a total of \$4,390 in unemployment insurance benefits for the weeks between October 6 and December 14, 2013.

**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.

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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant had to know on September 1 when she had her initial appearance that she was being charged with OWI, harassment, and assault charges. The paperwork she received from her initial appearance listed all these charges and says she was informed of them. She provided misleading information to Stafford when she disclosed only the OWI charge, wrote a statement only referring to the OWI charge, and brought in only the OWI complaint. On September 3, she disclosed the other charges and brought in the paperwork referring to those other charges, well after the 24-hour requirement. The employer had a valid reason for having information about the charges against the claimant even though they were for off-duty conduct.

The claimant's violation of a known work rule regarding disclosure of criminal charges and lack of candor about the charges 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. The driving without a valid license reason for discharge has not been proven because the claimant had a temporary license to drive after September 1. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law generally 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. But a claimant is not required 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 \$4,390 in benefits.

The issue of whether the claimant is required to repay the overpayment and whether the employer should be charged for the benefits is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated October 28, 2013, 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 claimant was overpaid \$4,390 in benefits. The issue of whether the claimant is required to repay the overpayment and whether the employer should be charged for the benefits is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs