

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUTUMN M BACKES

Claimant

APPEAL NO: 15A-UI-02309-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXIDE TECHNOLOGIES

Employer

OC: 01/11/15

Claimant: Respondent (2/R)

Iowa Code § 96.5(2) – Discharge
Iowa Code § 96.3(7) – Overpayment of Benefits
871 IAC 26.14(7)b, c – Request to Reopen Hearing

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 11, 2015 (reference 02) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for non-disqualifying reasons. The claimant did not respond to the hearing notice or participate at the March 23 hearing. Fred Gilbert, the human resource manager, appeared on the employer's behalf.

After the hearing was closed and the employer had been excused, the claimant contacted the Appeals Bureau. She requested that the hearing be reopened. Based on the claimant's request to reopen the hearing, the evidence, the arguments of the parties, and the law, the administrative law judge denies the claimant's request to reopen the hearing and concludes she is not qualified to receive benefits.

ISSUES:

Did the claimant establish good cause to reopen the hearing?

Did the employer discharge the claimant for a reason constituting work-connected misconduct?

Has the claimant been overpaid any benefits?

FINDINGS OF FACT:

The employer hired the claimant in July 2013 to work full time. When the claimant's employment ended, she was working as an environmental compliance technician. During orientation when the claimant started in 2013, she received information about the employer's policies. One of the policies informs employees they will be disciplined and/or terminated if they falsify any company documents.

Prior to December 28, 2014, the claimant's job was not in jeopardy. On December 28, the claimant cleaned a filter but did not replace a filter. The claimant recorded that she had changed or replaced this filter. On January 7, a maintenance employee changed this filter.

The employer concluded the filter had not been recently changed because it was plugged and did not allow air to flow through the filter.

Gilbert talked to the claimant on January 15 at her request. The claimant had some issues she wanted to discuss. During their conversation, the employer talked about the filter a maintenance employee changed on January 7. The claimant told the employer she had cleaned the filter, but had not changed or replaced it on December 28, 2014. The claimant documented that she had changed or replaced the filter. She did not indicate why she had recorded she changed the filter when she had not. She instead told the employer that December 28 had been a bad day for her.

After the claimant acknowledged she had falsified a business record, the employer discharged her on January 15, 2015; for falsifying a company record. The claimant established a claim for benefits during the week of January 11, 2015. The claimant has filed weekly claims and received benefits for the weeks ending January 24 through March 28, 2015. She received her maximum weekly benefit amount of \$432 for each of these weeks.

The claimant contacted the Appeals Bureau after the hearing was closed and the employer's witness had been excused. The claimant received the hearing notice before March 23, but she did not read the hearing instructions. The claimant assumed that because she had been called for the fact-finding interview and provided her phone number on other forms, she would be called for scheduled hearing. When the claimant did not receive a call for the hearing, she called the Appeals Bureau after the scheduled time for the hearing. By the time the claimant called, the hearing was closed and the employer had been excused. The claimant requested that the hearing be reopened.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c). The claimant acknowledged she did not read or follow the hearing instructions. Even though the claimant intended to participate at the hearing, she did not establish good cause for failing to read and follow the hearing instructions. The claimant's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharged her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant gave no explanation as to why she recorded she had changed a filter on a business record, but had not. Instead, of changing the filter, she only cleaned it. Even though the claimant's job was not in jeopardy before this incident, she knowingly disregarded the employer's interests by falsifying the employer's business record on December 28, 2014. The claimant committed work-connected misconduct. As of January 11, 2015 the claimant is not qualified to receive benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7). Based on this decision, the claimant is not legally entitled to receive benefits as of January 11, 2015. Therefore, she has been overpaid a total of \$4320 in benefits she received for the weeks ending January 24 through March 28, 2015.

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 issue of whether the employer participated at the fact-finding interview will be remanded to the Benefits Bureau to determine. If the employer satisfied the participation law, the claimant is legally responsible for paying back the overpayment. If the employer did not satisfy the participation requirement, the overpayment will be charged to the employer's account.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's January 11, 2015 (reference 02) determination is reversed. The employer discharged the claimant for a single incident of work-connected misconduct. As of January 11, 2015 the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible.

The claimant has been overpaid a total of \$4320 in benefits she received for the weeks ending January 24 through March 28, 2015. The issue of whether the employer satisfied the participation requirement of the law is **remanded** to the Benefits Bureau to determine. This determination then decides if the claimant is legally responsible for paying back the overpayment or if the employer's account will be charged this amount.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

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