

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY S WEIDNER
Claimant

APPEAL NO. 13A-UI-14333-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CDS GLOBAL INC
Employer

OC: 12/08/13
Claimant: Respondent (2-R)

Section 96.5-1 - Voluntary Quit
Section 96.3-7 - Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 30, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 22, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Linda Burns participated in the hearing on behalf of the employer with witnesses, Paula Slagle, and Teresa Mustard. Exhibits One through Four were admitted into evidence at the hearing. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the only wages in his base period, besides the wages from the employer, were \$159.00 from Iowa Beauty. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked part time for the employer as a customer service representative from September 20, 2012, to August 12, 2013.

On August 12, 2013, the claimant received a second corrective notice for excessive absenteeism after she was absent for work eight days from July 29, 2013, to August 8, 2013. The absences were nearly all for her illness or a family member's illness. She was informed that her job was in serious jeopardy and any further absences might result in termination.

The week before, the claimant had requested to take August 13, 2013, off work to take her 21-year-old daughter to a medical appointment. On August 12, the team lead, Teresa Mustard, informed the claimant that her request for the day off had been denied due to staffing needs. When the claimant told Mustard that there was no one else who could take her daughter to the

appointment, Mustard asked why the daughter's boyfriend could not take her. The claimant replied: "never mind, I will figure something out." Mustard never told the claimant that she would be discharged if she missed work.

The claimant called the customer service representative manager, Paula Slagle, on August 13 and said she would not be at work. She did not give a reason. The claimant did not report to work or call in on her next scheduled day of work on August 15. She came in August 16 and said she was quitting. She signed a voluntarily resignation form stating she was voluntarily terminating her employment because of absences.

The claimant's supervisors had made no decision as what discipline the claimant would have received if she had reported back to work. In fact, she would not have been discharged and was not at the stage on the employer's progressive discipline to be discharged.

The claimant voluntarily quit employment because she mistakenly believed she was about to be discharged.

The claimant filed for and received a total of \$744.00 in unemployment insurance benefits for the weeks between December 8, 2013, and January 18, 2014.

The employer had sent in documentation in lieu of participation. This documentation was not sent to the claimant prior to the hearing.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. Mustard testified very credibly that she never told the claimant that she would be discharged if she missed work on August 13. I also believe that she was not even at the stage where she would have been discharged. She unreasonably believed that she was about to be discharged without asked Paula Slagle what her employment status was.

The claimant voluntarily quit employment without good cause attributable to the employer.

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 \$744.00 in benefits.

There is a question as to whether the employer participated in the fact-finding interview that depends on a review of the information sent in by the employer for the fact-finding interview. It would improper in a contested case hearing to review information that has not been provided to the claimant. As a result, the issue of whether the claimant is required to repay the overpayment and whether the employer's account is subject to charge for the overpaid benefits is remanded to the agency.

DECISION:

The unemployment insurance decision dated December 30, 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 \$744 in benefits. The issue of whether the claimant is required to repay the overpayment and whether the employer's account is subject to charge for the overpaid benefits is remanded to the agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css