

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RHONDA JORGENSEN
Claimant

APPEAL NO: 13A-UI-04880-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MECCA
Employer

OC: 03/31/13
Claimant: Respondent (2-R)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

MECCA (employer) appealed an unemployment insurance decision dated April 19, 2013, reference 01, which held that Rhonda Jorgensen (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 30, 2013. The claimant participated in the hearing. The employer participated through Sarah Evans, Clinical Manager and Patty Haunsperger, Clinical Supervisor. Employer's Exhibits One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is an inpatient and outpatient substance abuse treatment center. The claimant was employed as a full-time recovery assistant in the inpatient facility from June 17, 2010 through April 3, 2013 when she was discharged for attendance. She was made a lead recovery assistant on February 15, 2013 for which she received more money and was held to a higher standard. The employer counseled her on March 8, 2013 when she met Clinical Manager Sarah Evans and Regional Director Andrea Thone. She had previously admitted to using a MECCA urinalysis test on March 2, 2013 so a drug test was completed on that day. The employer also counseled her on her attendance that day since the claimant had missed ten days in the last three months.

A formal written warning was issued to her on March 13, 2013 for attendance, waste fraud and abuse. The warning stated, "You must report to work on time, and as scheduled, on a consistent basis and improve your overall dependability as an employee." The employer advised her that her attendance would be closely monitored for the next 60 days and that further

disciplinary action would result if immediate and sustained improvement was not demonstrated. The warning specifically stated, "As a Lead Recovery Assistant, you are expected to show Leadership and set an example for other staff, including following all company policies at all times."

The claimant was discharged less than three weeks after the written warning because she left work early on March 30, 2013 without talking to a supervisor. She was scheduled from 10:00 a.m. to 8:00 p.m. but clocked out at 5:21 p.m. after telling the on-call counselor she had to leave for a family emergency. The claimant explained the reason for leaving as, "My sister called me at work and said that her boyfriend had just beat her up." The claimant did not take her sister to seek medical care and testified that she knew she could "get in trouble for leaving" but did not believe she would be fired so made the choice to leave.

The claimant filed a claim for unemployment insurance benefits effective March 31, 2013 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on April 3, 2013 for leaving work shortly after she was formally warned about her attendance and dependability. While the warning does not specifically state the claimant will be discharged if she has another unexcused absence, it does advise her that her attendance is critical and that her absences hinder the effective functioning of the department. The claimant said her reason for leaving was a family emergency but the evidence confirms it was not an emergency and could have waited less than three hours, when the claimant's shift was over. She chose her sister's emotional needs over her job and that certainly is her choice to make but it demonstrates an intentional and substantial disregard of the employer's interests. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated April 19, 2013, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs