

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CONNIE VALENTINE

Claimant

APPEAL NO: 15A-UI-07344-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON WAREHOUSE CO INC

Employer

OC: 06/07/15

Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct

Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 18, 2015, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 30, 2015. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Zac Easley, Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time material handler I for Jacobson Warehouse Company from June 16, 2014 to April 24, 2015. She was discharged for an altercation with a co-worker.

On April 23, 2015, the claimant became upset because she had to fill the forklift she was driving with propane, which involves switching out the tanks. She spent approximately two hours complaining about co-worker Esther Rueda not filling the tank during her prior shift and did not perform her job during that time frame. She also complained to Manager Zac Easley who told her to "focus up" and get back to work. He instructed the claimant not to bring the issue up to Ms. Rueda when she arrived for her shift and told her he would discuss the situation with Ms. Rueda. Despite his admonition, when Ms. Rueda arrived for her shift five hours later, the claimant approached her, swore at her and asked her why she left the forklift without propane. Ms. Rueda correctly explained that employees were instructed to run the forklifts out of propane so none of the propane was wasted but the claimant was not satisfied and continued her aggressive behavior toward Ms. Rueda until Ms. Rueda pushed her away. At that time, the claimant raised her arms and yelled to nearby employees, "You saw it." She then walked away and went to the break room where she called Mr. Easley.

Mr. Easley met with the parties and witnesses and took their statements, individually, and instructed Ms. Rueda to go home for the remainder of the day. The claimant and Ms. Rueda's statements effectively matched. The employer turned the matter over to Human Resources and they made the decision to terminate the claimant's employment (Employer's Exhibit One).

On January 23, 2015, the claimant and Ms. Rueda had another altercation because the claimant felt Ms. Rueda pulled her equipment in front of her. She yelled at Ms. Rueda and started an argument. There were a number of issues involving employee communication with employees on that shift at the time and Human Resources sent out a Letter of Expectations to all employees (Employer's Exhibit Two). The claimant signed her copy February 6, 2015 (Employer's Exhibit Two).

On February 11, 2015, the claimant was upset because Material Handler Mike Avey drove his forklift through the area where the claimant was working. The claimant proceeded to talk about the incident loudly with another employee but so Mr. Avey could hear her. The employer would have issued the claimant a written warning but there was a delay with Human Services so the employer met with the claimant and reminded her she had just signed the Letter of Expectations five days earlier. It also reminded the claimant that the Letter of Expectations stated if she broke the rules, her actions would subject her to disciplinary action up to and including termination.

The claimant has claimed and received unemployment insurance benefits in the amount of \$1,425.00 since her separation from this employer.

The employer participated in the fact-finding interview through written statements submitted prior to the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant was so consumed by the fact she had to change the propane in the forklift that she failed to perform her job for at least two hours after she arrived. Instead, she spent her time complaining to other employees about Ms. Rueda's actions. While the claimant did not engage Ms. Rueda physically, she instigated the argument with Ms. Rueda after being instructed by Mr. Easley not to confront Ms. Rueda when she arrived for work. Additionally, employees were instructed to run the propane out of the forklifts before filling them again and Ms. Rueda simply followed the policy. The claimant not only railed against Ms. Rueda for following the employer's rules, but ignored Mr. Easley's directions not to talk to her about it and challenged Ms. Rueda's actions. She antagonized Ms. Rueda until she pushed the claimant away from her, which resulted in Ms. Rueda's discharge from employment.

This was not the first time the claimant had an argument with a co-worker. She had a conflict with Ms. Rueda January 23, 2015, and with Mr. Avey, February 11, 2015, the latter occurring less than one week after she signed the Letter of Expectations. While the claimant did not place her hands on Ms. Rueda April 23, 2015, she was the instigator, and also the common denominator, in all three verbal attacks. The employer coached and counseled the claimant about her language and behavior but she failed to show any improvement in those areas. The claimant's actions April 23, 2015, in addition to being inappropriate and unprofessional, were also insubordinate as she refused to follow Mr. Easley's instructions after he told her not to approach Ms. Rueda and she did so anyway.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

871 IAC 24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)“b” as amended by 2008 Iowa Acts, Senate File 2160.

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 section 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 benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. In this case, the claimant has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer participated in the fact-finding interview through the written documentation from the employer and its representative Thomas & Thorngren. Consequently, the claimant's overpayment of benefits cannot be waived and she is overpaid benefits in the amount of \$1,425.00 for the five weeks ending July 11, 2015.

DECISION:

The June 18, 2015, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 claimant has received benefits but was not eligible for those benefits. The employer participated in the fact-finding interview within the meaning of the law. Therefore, the claimant is overpaid benefits in the amount of \$1,425.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css