

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LABEKKA E HENDERSON**

Claimant

**APPEAL NO. 10A-UI-01686-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**

Employer

**OC: 01/03/10**

**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 January 22, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 2, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Lynn Corbeil participated in the hearing on behalf of the employer with witnesses, Sarah Thomas, Kallie Long, and Tabitha Wilker. Exhibits One through Eleven were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked for the employer as a certified nurse's aide from March 31, 2008, to January 7, 2010. The claimant was informed and understood that under the employer's work rules, she could be discharged for verbal abuse of a resident, including personally insulting a resident or using profanity in the presence of a resident.

The claimant had been warned for (1) taking a break at the same time as another nurse's aide on January 6, 2009; (2) being argumentative with her supervisor and calling her a bitch on July 18, 2009; (3) failing to complete her assigned work on August 18, 2009; and (4) improperly transferring residents on September 1, December 2, and 22, 2009.

On January 7, 2010, the claimant and a coworker answered a call light from a resident who was in the bathroom. The resident said she needed to wipe. When the claimant questioned the resident about the toilet paper she had her hand, the resident stated she was going to wipe herself but they had picked her up from the toilet. As the claimant was wiping the resident, the claimant muttered under her breath, "fucking retard." The coworker heard the comment and reported it to her supervisor.

The claimant was discharged on January 7, 2010, for verbal abuse and using profanity in the presence of a resident.

The claimant filed for and received a total of \$612.00 in unemployment insurance benefits for the weeks between January 3 and 30, 2010.

### **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 section 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. I believe Kallie Long's testimony and the claimant admits she said something under her breath, but cannot remember what she said, which is less than an outright denial.

The claimant's violation of a known work rule 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

### **DECISION:**

The unemployment insurance decision dated January 22, 2010, 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 matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b 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