

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COURTNEY M MEARS
Claimant

APPEAL NO. 13A-UI-10023-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY LLC
Employer

OC: 11/04/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated August 20, 2013, reference 03, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 7, 2013. Although Ms. Mears provided a telephone number, the telephone number was not operable and the claimant did not call in while the hearing was in progress. The employer participated by Ms. Morene Welch, Human Resource Technician. Employer's Exhibits A, B, C, and D were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct and whether the claimant is liable to repay any overpayment in unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Courtney Mears was most recently employed by IAC Iowa City LLC from January 11, 2013 until July 31, 2013 when she was discharged for violation of company policy. Ms. Mears was employed as a full-time production worker and was paid by the hour. Her immediate supervisor was Carl Meyer.

Ms. Mears was discharged on July 31, 2013 when she was personally observed by Timothy Starkweather and Carl Meyer at 12:15 a.m. on that date being away from her work station visiting with another worker at the other worker's machine without authorization and in violation of company policy.

Ms. Mears was aware of the company policy, rule 15, which prohibited employees from improperly using work time and failing to remain in employee's work area until the end of their work shift without authorization. Because Ms. Mears had received three previous warnings from

the company during the time that she was most recently employed, she was subject to discharge for accumulating four warnings and was discharged from employment.

The employer's witness is unsure whether the employer participated in fact finding. Agency records available at the time of hearing do not provide any information on whether the employer participated in the fact finding.

REASONING AND CONCLUSIONS OF LAW:

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.

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 of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, the evidence in the record establishes that Ms. Mears had been warned for violation of company policies in the past, one of which included being out of her work area for non productive reasons and was issued to the claimant on June 13, 2013. The claimant was aware that further violations could result in further discipline including discharge. The claimant

was discharged when she accumulated four written warnings in violation of company policy. The final incident that caused the claimant's discharge took place when Ms. Mears once again was out of her work area being non productive during work hours, visiting with another employee in violation of company policy.

There being no evidence to the contrary, the administrative law judge concludes that the employer has sustained its burden of proof in showing the claimant's discharge took place under disqualifying conditions.

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 to the Claims Division the issue of whether the claimant has been overpaid, the amount of the overpayment and whether the employer participated in the fact finding, and if not, whether the overpayment will be repaid by the claimant or charged to the employer's account.

DECISION:

The representative's decision dated August 20, 2013, reference 03, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of the overpayment is remanded to the Claims Division for determination as to whether there has been an overpayment, the amount and whether the employer participated in fact finding and whether the claimant will have to repay the overpayment or the overpayment will be charged to the employer's account.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs