

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JULIE A MUGGE**  
Claimant

**APPEAL NO. 11A-UI-15559-SW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHEROKEE CO SOLID WASTE COMM**  
Employer

**OC: 11/06/11**  
**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 November 30, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A hearing was held on January 23, 2012 in Sioux City, Iowa. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Wally Miller, Attorney at Law. John Loughlin, Attorney at Law, participated in the hearing on behalf of the employer with a witness, Donna Burkhardt. Exhibits One through Six were admitted into evidence at the hearing.

**ISSUES:**

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked for the employer from 1996 to October 26, 2011. She was assistant manager for the landfill and was responsible for issuing checks, including paychecks, with a requirement that the check also be signed by the landfill manager, Don Pitts. The employer has an employee benefit called personal time off (PTO) that an employee can use in place of vacation pay, sick pay, holiday pay, or other similar paid time off. Employees accrue a certain number of hours of PTO per pay period depending upon the employee's years of service. Employees with 10 years of service, such as the claimant, were allowed to carry over up to 348 hours of unused PTO hours from year to year. The policy provided for payment for unused PTO if an employee separated from employment. The claimant administered the PTO program for the employer.

From June 30, 2008, to September 30, 2011, the claimant issued payroll checks to herself with the approval and signature of Don Pitts totaling over \$13,000.00, in addition to her regular wages. The claimant considered these payments as payment of PTO hours from her PTO bank, even though there was no corresponding time off taken for vacation, sick leave, holidays,

or other time off. During pay periods in which the claimant received these "PTO" payments, she received the PTO paychecks on top of her regular full-time paychecks. The claimant justified the payments because she did not take much PTO during the year and would lose unused PTO hours due to the 348-hour cap. The payments were not authorized by the employer's governing body, the Cherokee County Landfill Commission.

During an audit performed in October 2011 by a certified public accounting firm for the fiscal year ending June 30, 2011, the payroll checks discussed above were discovered by the auditor and reported to the Cherokee County Landfill Commission. The employer discharged the claimant on October 26, 2011, for issuing and taking unauthorized compensation to which she was not entitled.

The claimant filed for and received a total of \$5,005.00 in unemployment insurance benefits for the weeks between November 6, 2011, and February 4, 2012.

### **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 § 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 claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of ethical behavior the employer had the right to expect of the claimant. The claimant unquestionably knew she was not entitled to be paid for PTO without any corresponding time off. She administered the policy for the employer. Her offered justification amounts to a rationalization for unethical conduct. She had to know that she could not receive payment for personal time off when she took no time off. The personal time off policy makes it clear that the payment was only to be used to replace regular wages that otherwise would not be paid due to an absence from work. 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 § 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 § 96.3-7-b is remanded to the Agency.

Also, the law provides for an enhanced disqualification for gross misconduct if a claimant admits in writing to or is convicted of an indictable offense. Iowa Code § 96.5-2-b & c. Although the record contains evidence that a criminal prosecution might occur, the conditions for imposing a gross misconduct disqualification have not been met. The law provides that "Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim." It is up to the employer to request a redetermination from the Department regarding the gross misconduct disqualification, if such a redetermination is warranted.

**DECISION:**

The unemployment insurance decision dated November 30, 2011, 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 § 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/css