

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNN A KOFOOT
Claimant

APPEAL NO. 06A-UI-11793-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TGM PIZZA INC
Employer

OC: 05/21/06 R: 02
Claimant: Respondent (2)

Section 96.5-2-a – Misconduct
871 IAC 24.32(9) – Disciplinary Suspension
Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

TGM Pizza, Inc. filed a timely appeal from an unemployment insurance decision dated November 30, 2006, reference 09, which allowed benefits to Lynn A. Kofoot. After due notice was issued, a telephone hearing was held December 26, 2006 with Ms. Kofoot participating. Owner Marty Gritz participated for the employer. Exhibit One was admitted into evidence.

ISSUE:

Was the claimant suspended for misconduct in connection with her employment?
Has the claimant been overpaid?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Lynn A. Kofoot was working as a customer service representative for TGM Pizza, Inc. at the time of her suspension June 24, 2006. Ms. Kofoot was absent without contact that day. She had been absent without contact in the past and had received verbal warnings. Ms. Kofoot has received unemployment insurance benefits in the gross amount of \$551.00 since the date of that suspension.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was suspended for misconduct in connection with her employment. It does.

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.

Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The evidence in the record establishes that Ms. Kofoot was suspended for an unexcused absence on June 24, 2006 and that she had been warned about similar unexcused absences in the past. This is sufficient to establish excessive unexcused absenteeism. Benefits must be withheld.

Ms. Kofoot has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

DECISION:

The unemployment insurance decision dated November 30, 2006, reference 09, is reversed. The claimant was suspended for misconduct in connection with her employment. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$551.00.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs