

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JESSICA S SCHILLING
620 N FRONT ST
NORTH LIBERTY IA 52317-9367**

**REM-IOWA INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-05762-CT
OC: 05/07/06 R: 03
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) - Recovery of Overpayments

STATEMENT OF THE CASE:

REM-Iowa, Inc. filed an appeal from a representative's decision dated May 26, 2006, reference 01, which held that no disqualification would be imposed regarding Jessica Schilling's separation from employment. After due notice was issued, a hearing was held by telephone on June 22, 2006. The employer participated by Patrick Costigan, Program Director, and Elizabeth Thompson, Team Leader. Ms. Schilling participated in a portion of the hearing but had to leave the line before the hearing concluded due to work. She had not, prior to the hearing, requested that the hearing date or time be changed to accommodate her work schedule.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Schilling was employed by REM-Iowa, Inc. from July 25, 2005 until May 15, 2006 as a full-time residential aide. The employer provides supportive services for mentally retarded individuals. Ms. Schilling was discharged from the employment.

Ms. Schilling received a written warning in December of 2005 because she breached confidentiality. The supervisor discussed an allegation of misconduct with her and advised her to keep the matter confidential. Ms. Schilling discussed the matter with a coworker in violation of the instruction she had been given. On or about March 7, 2006, Ms. Schilling was given an instruction by her supervisor. As she walked past the supervisor, she commented, "take this job and shove it." In April of 2006, Ms. Schilling was discussing the cares of one consumer as she entered a bathroom where another consumer was. The other consumer was visible to her as she entered the room. This was considered a violation of the first consumer's right to confidentiality regarding care. The issue was addressed with Ms. Schilling when she was disciplined on April 12, 2006.

The written warning of April 12 also discussed the fact that Ms. Schilling attempted to discourage a coworker from reporting an accident that occurred in a company vehicle. Her actions were apparently due to the fact that there was no damage caused by the accident. The employer requires that all accidents be reported even if there is no damage. The warning also addressed Ms. Schilling's failure to abide by a consumer's program. She was saying "no" to the consumer rather than re-directing him. Finally, the warning addressed the fact that Ms. Schilling was found to have a harsh and rude tone of voice when speaking to consumers.

On or about April 27, a consumer apparently told Ms. Schilling that he did not like her. She responded by saying words to the effect, "That's fine if you don't like me. Then I don't like you either and I don't want to be around people that don't like me." The decision to discharge Ms. Schilling was made after a coworker brought several concerns to the employer's attention on May 4. One of the concerns was that Ms. Schilling took frequent smoke breaks outside the building where she worked and spent a lot of time on personal telephone calls. Both issues had been addressed with Ms. Schilling on prior occasions. She was notified of her discharge on May 5, 2006.

Ms. Schilling has received a total of \$417.00 in job insurance benefits since filing her claim effective May 7, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Schilling was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Ms. Schilling had a pattern and practice of disregarding the employer's standards or interests. She divulged confidential information in spite of being told not to in December of 2005. She attempted to have a coworker violate the employer's policy regarding reporting accidents. She told a supervisor to "take this job and shove it."

Ms. Schilling was on notice from the two warnings she received that her continued employment was in jeopardy. In spite of the warning, she continued to take excessive smoke breaks and to take work time for personal telephone calls. Her job was to provide care for mentally retarded individuals. She could not provide the level of care and supervision required if she was spending work time on the telephone or outside smoking. Given the mental status of the employer's clients, it would be expected that Ms. Schilling would not make statements that might cause agitation to the consumers. Statements such as "I don't like you" and "I don't want to be around people that don't like me" might not be well-received by an individual who is mentally retarded.

After considering all of the evidence, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied. Ms. Schilling has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated May 26, 2006, reference 01, is hereby reversed. Ms. Schilling was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Schilling has been overpaid \$417.00 in job insurance benefits.

cfc/pjs