

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROSEMARY WATSON**  
Claimant

**APPEAL NO. 08A-UI-01285-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMF BOWLING CENTERS INC**  
Employer

**OC: 12/10/06 R: 02  
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, AMF Bowling Centers, filed an appeal from a decision dated January 28, 2008, reference 09. The decision allowed benefits to the claimant, Rosemary Watson. After due notice was issued a hearing was held by telephone conference call on February 20, 2008. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Assistant Manager Sam Neilson.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Rosemary Watson was employed by AMF Bowling Centers from May 22 until November 10, 2007, as a full-time cook. She received a second written warning on November 7, 2007, from Assistant Manager Sam Neilson for being no-call/no-show to work on November 2 and 3, 2007. The warning advised her any future incidents of tardiness or absenteeism would result in discharge.

On November 10, 2007, Ms. Watson called General Manager Mike Monroe and said she would be ten minutes late, but then she did not appear for work at all that day and did not call again. Mr. Monroe removed her from the schedule and she never contacted the employer again.

Rosemary Watson has received unemployment benefits since filing an additional claim with an effective date of December 2, 2007.

**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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant had been advised her job was in jeopardy as a result of her absenteeism and tardiness. Three days after receiving her final written warning the claimant was again no-call/no-show to work. Ms. Watson did not participate in the hearing to explain the reason for her absence on November 10, 2007, and has not rebutted the employer's testimony regarding her attendance problems. She was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of January 28, 2008, reference 09, is reversed. Rosemary Watson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$115.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs