

**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**

**DEBORAH A WILLIAMS
2708 E 53RD ST APT 6
DAVENPORT IA 52807**

**REGIS CORP
C/O EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006 9000**

**Appeal Number: 04A-UI-12559-DWT
OC: 10/24/04 R: 04
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 are 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

STATEMENT OF THE CASE:

Regis Corporation (employer) appealed a representative's November 15, 2004 decision (reference 01) that concluded Deborah A. Williams (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 14, 2004. The claimant responded to the hearing notice, but was not available for the hearing. A message was left on the claimant's answering machine for her to contact the Appeals Section. Anna Marie Gonzales, Alicia Medina, April Krebs and Kitty Ikeberry appeared on the employer's behalf.

After the hearing had been closed and the employer had been excused, the claimant contacted the Appeals Section. The claimant requested that the hearing be reopened. Based on the claimant's request to reopen the hearing, the evidence, the arguments of the parties, and the

law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on July 21, 2004. The claimant was hired as a stylist with the understanding she had to satisfactorily complete a 90-day probation.

The employer allows employees to do a free chemical treatment on a family member's hair once a month. Stylists are not allowed to solicit any of the employer's clients or do any chemical treatments at their home. The employer allows employees to purchase shampoo and conditioner at work like customers, but employees cannot purchase any chemical treatments from the employer. If an employee wants a chemical treatment to use away from the employer's business, such as a relaxer, the employee must purchase that from a supply store.

When the claimant was working on September 30, 2004, another employee saw the claimant take a relaxer product from the employer's inventory and put it in her bag. The employee asked the claimant what she was doing and was told the claimant was going to do a girl's hair. The employee saw the claimant take the chemical product out of the employer's store. The employee also asked another co-worker if she had seen the claimant take any product from the store. She had not. On October 3, the claimant worked with this employee again. When the claimant put another relaxer product in her bag, the claimant again did not say anything when the employee (co-worker) asked the claimant what she was doing. This time, two co-workers saw the claimant remove a chemical product from the employer's business. On October 3, management learned the claimant took chemical products from the employer's business without paying for the products. The employer did not allow employees to take chemical products home. The employer's inventory verified that two relaxing products were missing. The total wholesale value of the missing product was about \$60.00.

On October 5, the employer talked to the claimant about the missing chemical products. Even though the claimant denied taking any product, the employer concluded she had. The employer discharged the claimant on October 5, 2004 for taking the employer's product out of the business even though she was not authorized to take the product and the claimant did not pay for the product.

The claimant established a claim for unemployment insurance benefits during the week of October 24, 2004. The claimant filed claims for the weeks ending October 30 through December 11, 2004. The claimant received her maximum weekly benefit amount of \$186.00 for each of these weeks.

When the claimant was not available for the noon hearing, a message was left on her answering machine to contact the Appeals Section immediately. The claimant contacted the Appeals Section at 12:35 p.m. By the time the claimant called, the hearing had been closed and the employer had been excused. The claimant was not available because she thought the

hearing was scheduled at 1:00 p.m. instead of noon. The claimant had been running some errands and could have been available for the hearing, if she had remembered the hearing was at noon. When the claimant reviewed her hearing notice, she confirmed the hearing notice indicated the hearing was scheduled for noon. The claimant requested that the hearing be reopened.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The claimant received the hearing notice and even responded to the hearing notice. The facts indicate the claimant planned to participate in the hearing. Unfortunately, the claimant forgot about the noon hearing even though the hearing notice indicated the hearing was scheduled at noon. The claimant made a mistake about the time of the hearing. She did not, however, establish good cause to have the hearing reopened. Therefore, her request to reopen this matter is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer does not allow employees to purchase chemical products for personal use. Even if the claimant did not realize she could not use the employer's relaxer product at her home, she did not pay for the relaxer products she took from the employer's business on September 30 and October 3. The claimant's failure to pay for \$60.00 worth of product amounts to an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for reasons amounting to work-connected misconduct.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending October 30 through December 11, 2004. The claimant has been overpaid \$1,302.00 in benefits she received for these weeks.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's November 15, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 24, 2004. This disqualification continues until

she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits for the weeks ending October 30 through December 11, 2004. The claimant has been overpaid and must repay \$1,302.00 in benefits she received for these weeks.

dlw/kjf