

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

STACIE K DAVIS
2974 – 260TH ST
GREENFIELD IA 50849

HOLT PLUMBING & HEATING INC
304 E MADISON
WINTERSET IA 50273

Appeal Number: 05A-UI-02460-AT
OC: 01-30-05 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 Overpayment

STATEMENT OF THE CASE:

Holt Plumbing & Heating, Inc. filed a timely appeal from an unemployment insurance decision dated March 8, 2005, reference 01, which allowed benefits to Stacie K. Davis. After due notice was issued, a telephone hearing was held March 28, 2005 with Ms. Davis participating. President Lynn Holt participated for the employer. Exhibit One was admitted into evidence.

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: Stacie K. Davis was employed in the dispatch area of Holt Plumbing & Heating, Inc. from January 2001 until she was discharged January 31, 2005. Shortly before discharging Ms. Davis, President Lynn Holt reviewed long distance telephone bills and discovered that Ms. Davis had made 141 long distance calls to her home, her parent's home and to her husband's place of business since October 2004. Ms. Davis had not requested or received permission to make the calls and had not offered to pay for them. While the company did not have a written policy covering such calls, Mr. Holt had talked to the staff about the matter. Ms. Davis had been present at that time. Ms. Davis has received unemployment insurance benefits since filing a claim effective January 30, 2005.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that Ms. Davis was discharged 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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The evidence establishes that Ms. Davis had received reasonable notice that personal long distance calls were not to be charged to the employer. Despite this, Ms. Davis did not request or receive permission to place the calls. Even after hearing the employer's oral statements on personal long distance calls, she did not offer to pay for the ones which she had made and continued making the calls. This is sufficient to establish deliberate actions contrary to the employer's interest. Benefits are withheld.

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.

Ms. Davis has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated March 8, 2005, reference 01, is reversed. Benefits are withheld until the claimant 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 \$844.00.

pjs/kjf