

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSHANDA C HENDERSON
Claimant

APPEAL NO. 10A-UI-09083-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTERSTATE MANAGEMENT CO LLC
Employer

OC: 05/09/10
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 16, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 11, 2010. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Dustin Hollenbach participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked as a housekeeper for the employer from July 9, 2008, to May 1, 2010. She was warned (1) on December 11, 2008, about leaving work while she was on the clock, (2) on February 17, 2009, for multiple absences without providing a legitimate excuse, and (3) on March 17, 2010, for missing work 11 times in three weeks without providing a legitimate excuse. In her final warning, she was notified if she was absent again without a doctor's excuse or proof of an appointment, she would be terminated.

The claimant was absent from work on May 2, 2010. She said it was due to a toothache, but she never saw a dentist or provided an excuse for the absence. She was absent afterward because she said she needed to find housing after being evicted.

The claimant was discharged on May 5, 2010, due to excessive unexcused absenteeism.

The claimant filed for and received a total of \$1,932.00 in unemployment insurance benefits for the weeks between May 9 and August 14, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides:

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 preponderance of the evidence establishes the claimant was absent from work repeatedly and she failed to provide an excuse for her absences as instructed. Work-connected misconduct has been proven in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated June 16, 2010, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid

wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs