

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREA M CORONA
Claimant

APPEAL NO. 06A-UI-10049-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRANDVIEW HEIGHTS INC
Employer

**OC: 09/03/06 R: 02
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the representative's October 6, 2006, reference 02, decision that held the claimant eligible to receive unemployment insurance benefits upon a finding that the claimant was separated under nondisqualifying conditions. After hearing notices were mailed to the parties, a telephone conference hearing was conducted from Des Moines, Iowa, on October 30, 2006. The claimant participated and testified. Participating as a witness for the employer was Mr. Craig Koonce. Exhibits One through Eight were received into evidence.

ISSUE:

Did the claimant voluntarily leave employment for reasons that qualify her to receive unemployment insurance benefits or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds Andrea Corona was employed by the captioned nursing facility from June 15, 2005 until April 13, 2006, when she was discharged by the employer. Ms. Corona was discharged from employment after she failed to report or notify the employer of her impending absences on April 9, 10 and 11, 2006. Based upon previous warnings that had been served upon the claimant and the claimant's violation of the company policy which required her to provide direct notification to the company's scheduler, a decision was made to terminate Ms. Corona from her employment. The claimant was given the option of resigning in lieu being discharged. The claimant did not provide notification to the employer during hours that the claimant reasonably could expect anyone would be available to take her message.

REASONING AND CONCLUSIONS OF LAW:

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).

In this case the evidence establishes that Ms. Corona was discharged by the employer for repeated failure to follow company policy which required her to personally notify the facility's scheduler when she was going to be absent from work. Despite warnings, the claimant continued to violate this policy and was discharged after she failed to report or to provide proper notification on April 9, 10 and 11, 2006.

It is the opinion of the administrative law judge based upon the hearing record that the claimant was aware of the employer's reasonable expectations and failed to follow them. Her conduct, thus, was in disregard of the employer's interest and reasonable standards of behavior that the employer had the right to expect of its employees under the provisions of the Iowa Employment Security Law.

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 benefits to which she is not entitled.

DECISION:

The representative's decision dated October 6, 2006, reference 02, is reversed. The claimant was discharged for misconduct in connection with the work and is disqualified from receiving unemployment insurance benefits until she has worked in and has received wages in insured work equal to ten times her weekly benefit allowance, providing that she meets all other eligibility requirements of the law. The claimant has been overpaid \$2,115.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

cs/pjs