

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH M PERRIN
Claimant

APPEAL NO. 07A-UI-02661-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DES MOINES REGIONAL TRANSIT
AUTHORITY/DART**
Employer

**OC: 02/11/07 R: 02
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer, DART, filed an appeal from a decision dated March 9, 2007, reference 01. The decision allowed benefits to the claimant, Sarah Perrin. After due notice was issued, a hearing was held by telephone conference call on April 2, 2007. The employer participated by Human Resources Director Randy Ross, Manager of Ride Share Rebecca Lovig, and Human Resources Specialist Cindy Nelson.

The claimant called the Appeals Section after 4:00 p.m. on Friday, March 30, 2007, to request a postponement. The administrative law judge did not receive the message until 7:30 a.m. on Monday, April 2, 2007. The call was returned at 7:40 a.m. and the only response was a voice mail. A message was left indicating the postponement could not be granted, as it was not an emergency situation and not made at least three days prior to the hearing. She was notified the hearing would go as scheduled and if she wished to participate she must contact the Appeals Section with a telephone number where she could be reached at 2:00 p.m. that day. At the time the hearing concluded at 2:17 p.m., the claimant had not contacted the Appeals Section to provide a number and did not participate.

ISSUE:

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

FINDINGS OF FACT:

Sarah Perrin was employed by DART from April 18, 2006 until February 9, 2007, as a part-time administrative assistant working 10:00 a.m. until 4:00 p.m. The claimant had received several verbal warnings from Manager of Ride Share Rebecca Lovig about her absenteeism. This was also noted in her performance review on November 18, 2006, which caused her overall performance rating to be unsatisfactory.

A formal written warning was given on December 14, 2006, for absenteeism and a final written warning given on January 15, 2007. On February 6, 2007, Ms. Lovig met with the claimant to discuss her on-going failure to improve her attendance and asked her to submit a written plan of action on how she was going to improve her attendance and maintain her employment. Ms. Perrin submitted the plan on February 9, 2007, but then left the office without permission around 2:00 p.m. to attend a holiday party at the school of one of her children.

When she returned around 3:15 p.m., the claimant was summoned to Ms. Lovig's office and asked why she had left work without permission or notification. Ms. Perrin stated she thought she had been granted permission to leave because she had sent an e-mail on January 9, 2007, asking for three different days off. Ms. Lovig had e-mailed back granting permission for only one of the requested days, and February 9, 2007, was not one of them. The claimant maintained since she had not received any specific denial for that day, she assumed it had been granted. Ms. Lovig asked her why she would assume that, especially given that she was already on probation for absenteeism and had been asked to submit a performance improvement plan that day. The claimant became upset and did not answer. At that point, she was discharged for excessive absenteeism.

The claimant's prior absences were due to lack of transportation a lot of the time. Ms. Lovig had offered her a free bus pass since she lived on a bus route. Ms. Perrin said she "did not know how" to ride the bus and a "trainer" was offered, someone who would meet her at the bus stop near her house and escort her through the process, but she declined. Her other absences were due to ill children, but her husband is a full-time stay at home father who is responsible for providing the childcare. He would be "unavailable" on some occasions for "personal reasons" for which no details were given.

Sarah Perrin has received unemployment benefits since filing a claim with an effective date of February 11, 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. She had, on the final day of her employment, submitted a plan to improve her attendance but then left without permission or notification to attend a party at her child's school. She had not received any authorization to be gone that day. Her assertion that no specific refusal of the request meant it had been granted is specious. The e-mail Ms. Perrin sent was for three separate days and only one day was approved. The administrative law judge believes any reasonable person would understand permission was not granted for the other days or, if there was any uncertainty in her mind, the claimant could have checked with Ms. Lovig to find out for sure if February 9, 2007, time off had been granted.

The claimant's absences due to transportation are not considered excused, as it is a matter of purely personal consideration. See Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). In addition, being gone due to ill children is not logical, as she had a full-time stay at home husband whose responsibility it was to care for the children and the claimant's absence from work to provide care would not be necessary.

The record establishes the claimant 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 March 9, 2007, reference 01, is reversed. Sarah Perrin 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 \$882.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw