

**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**

**MARGUERITA E ABUJOBARAH
APT 69208
6569 VISTA DR
WEST DES MOINES IA 50266**

**LUTHERAN SERVICES IN IOWA INC
ATTN HUMAN RESOURCES
3116 UNIVERSITY AVE
DES MOINES IA 50311**

**Appeal Number: 05A-UI-06323-HT
OC: 07/11/04 R: 02
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) – Discharge
Section 96.3(7) – Overpaid

STATEMENT OF THE CASE:

The employer, Lutheran Services In Iowa, Inc. (Lutheran Services), filed an appeal from a decision dated June 8, 2005, reference 03. The decision allowed benefits to the claimant, Marguerita Abujobarah. After due notice was issued, a hearing was held by telephone conference call on July 19, 2005. The claimant participated on her own behalf. The employer participated by Nurse Coordinator Julie Adair and Employee Relations Manager Marty Swanson. Exhibits One and Two were admitted into the record.

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: Marguerita Abujobarah was employed by Lutheran Services from August 27, 2004 until May 18, 2005. She was a part-time home health aide working between 31 and 40 hours per week. At the time of hire the claimant was given a copy of the employer's dress code and code of ethics, which she signed. The policies strictly prohibit an aide from taking any friends or family members to the homes of any of the clients. Also, aides are prohibited from providing services for clients outside of Lutheran Service's operating hours without authorization from the administrator or clinical director. The policy clearly provides for disciplinary action up to and including discharge for violations of these policies.

On May 17, 2005, the claimant was scheduled to work from 12:30 p.m. to 3:30 p.m. for a client. She arrived at 12:15 p.m., which was within the parameters of the employer's policies, and left at 3:15 p.m. However, she left to pick up her daughter which she then brought to the client's home and continued to work until approximately 5:00 p.m. A neighbor of the client reported this to the next aide who came on duty, and the aide reported it to Nurse Coordinator Julie Adair on May 18, 2005.

Ms. Adair confirmed the information with the client then met with Ms. Abujobarah. The claimant admitted she had worked until 5:00 p.m. without authorization, but had not claimed the time on her time sheet. Incorrectly reporting the time worked was fraud, and failure to obtain authorization for the extra time was a policy violation. The employer has only a certain number of "units" of time to be used by each client and these must be distributed wisely and billed correctly under the application state and federal laws. In addition, taking a family member into a client's home, even with the client's knowledge and permission, is a violation of the federally mandated privacy statutes.

Marguerita Abujobarah has received unemployment benefits since filing an additional claim with an effective date of May 15, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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 claimant had received a copy of the policies governing the performances of her job but elected to ignore them. The employer must conduct its business in accordance with the state and federal regulations which govern the providing of care to dependent adults. Ms. Abujobarah's conduct violated those policies and jeopardized the employer. This is conduct not in the best interests of the employer and 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 June 8, 2005, reference 03, is reversed. Marguerita Abujobarah is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

The claimant has received a total of \$1,748.00 since filing her additional clam. In another decision she has been found to be overpaid \$148.00 for failing to report vacation pay. In addition to that overpayment she is overpaid \$1,600.00 in unemployment benefits.

bgh/kjw