

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MONICA L SECOR**  
Claimant

**APPEAL NO: 08A-UI-01065-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEEF PRODUCTS INC**  
Employer

**OC: 12/30/07 R: 03**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Beef Products, Inc. (employer) appealed a representative's January 28, 2008 decision (reference 03) that concluded Monica L. Secor (claimant) was qualified to receive unemployment insurance benefits, and the held the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 14, 2008. The claimant participated in the hearing. Robert Wood, the human resources manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on February 20, 2007. The claimant worked as a full-time laborer. At the time of hire, the claimant learned employees would be discharged if they accumulated 14 attendance points in a rolling calendar year. The employer assessed an employee one point if they were ill and called in at least 30 minutes before a scheduled shift. If the employee was ill but did not properly notify the employer 30 minutes before a scheduled shift, the employee would receive three points for the absence instead of one.

As the result of a couple of days the claimant did not report to work or properly notify the employer she was unable to work, the claimant had accumulated 13.5 attendance points as of December 4, 2007. Wood talked to the claimant about her attendance on December 4. He warned her that her job was in jeopardy if she received any more attendance points. The claimant also received a written notice that her job was in jeopardy.

On January 2, 2008, the claimant was ill and decided she was unable to work. Initially the claimant planned to work and then decided she should not work. The claimant did not contact the employer until 12:43 p.m. for her 1:00 p.m. scheduled shift. Since the claimant had not called by 12:30 p.m., the employer assessed her three points instead of one point. The claimant understood that since she would receive at least one attendance point for being absent, she would be discharged because she then would have accumulated more than 14 points. If the claimant had properly notified the employer, the employer would have reviewed the claimant's attendance and may or may not have discharged her on January 2, 2008.

The claimant established a claim for benefits during the week of December 30, 2007. The claimant filed claims for the weeks ending January 12 through February 2, 2008. The claimant received her maximum weekly benefit amount of \$347.00 for each of these weeks.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew her job was in jeopardy in early December when the employer told her she had accumulated 13.5 attendance points. On January 2, 2008, the claimant's testimony that she was ill and unable to work is not disputed. Even though the claimant was ill, she still committed work-connected misconduct because she failed to properly notify the employer she was ill and unable to work when she knew her job was in jeopardy. For failing to properly notify the employer she was unable to work, the claimant is not qualified to receive unemployment insurance benefits. As of December 30, 2007, the claimant is not qualified to receive benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending January 12 through February 2, 2008. She has been overpaid \$1,388.00 in benefits she received for these weeks.

#### **DECISION:**

The representative's January 28, 2008 decision (reference 03) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 30, 2007. This

disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant has been overpaid and must repay a total of \$1,388.00 in benefits she received for the weeks ending January 12 through February 2, 2008.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs