

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HEATHER L LEWIS**  
Claimant

**APPEAL NO. 09A-UI-02242-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY HOSPITAL**  
Employer

**Original Claim: 01/18/09  
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Mercy Hospital filed an appeal from a representative's decision dated February 10, 2009, reference 01, which held that no disqualification would be imposed regarding Heather Lewis' separation from employment. After due notice was issued, a hearing was held by telephone on March 5, 2009. The employer participated by Sheryl Knutson, Employee Relations Coordinator; Greg Kuntz, Department Manager; and Mike Lebsack, Department Director. Ms. Lewis did not respond to the notice of hearing.

**ISSUE:**

At issue in this matter is whether Ms. Lewis was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Lewis was employed by Mercy Hospital from June of 1994 until December 21, 2008. She worked approximately 30 hours each week as a radiology technician. Her last day at work was October 17, 2008. She was on a medical leave of absence that expired November 27, 2008.

During the early morning hours of December 21, 2008, Ms. Lewis went to the workplace and began packing items into garbage bags and making photocopies. Among the items she packed was a lead vest owned by Mercy Hospital and valued at approximately \$600.00. She also packed up a crock pot and espresso machine that did not belong to her. A security officer was contacted, as was the department director. When told that her department manager was coming to the facility, Ms. Lewis removed the lead vest, espresso machine, and crock pot from the bags in which she had placed them. The remaining items she took or was attempting to take belonged to her.

When questioned by her department manager, Ms. Lewis indicated she was thinking of resigning and that she came to collect her possessions at the only time convenient for her to do so. She was discharged for being at the facility when not scheduled to work and for the attempted removal of items that did not belong to her.

Ms. Lewis filed a claim for job insurance benefits effective January 18, 2009. She has received a total of \$2,863.00 in benefits since filing the claim.

**REASONING AND CONCLUSIONS OF LAW:**

Ms. Lewis was discharged from employment with Mercy Hospital. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. Part of the reason for Ms. Lewis' discharge was the fact that she was at the workplace on December 21 when not scheduled to work. Although this was a violation of policy, it was not so substantial as to constitute an act of misconduct.

Ms. Lewis' conduct in attempting to remove items that did not belong to her constituted attempted theft. The \$600.00 lead vest belonged to the employer and she would have no reason to remove it from the facility, especially if she was considering resigning as she told her manager. She also had no legitimate reason to remove the crock pot and espresso machine that did not belong to her. Although security stopped her before she could remove the items, the fact remains that she had the intention of removing them, as evidenced by the fact that she placed them in bags with other, personal items she intended to take. Theft is clearly contrary to the type of behavior an employer has the right to expect and constitutes misconduct sufficient to warrant a denial of job insurance benefits.

Ms. Lewis has received benefits since filing her claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview that resulted in the award of benefits, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine whether Ms. Lewis will be required to repay benefits already received.

**DECISION:**

The representative's decision dated February 10, 2009, reference 01, is hereby reversed. Ms. Lewis was discharged for misconduct in connection with her employment. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Lewis will be required to repay benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw