

**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**

**NANCY L STUART  
1285 BROWN AVE  
DUBUQUE IA 52001**

**THE GANNON CENTER  
ATTN ACCOUNTING DEPARTMENT  
200 MERCY DR STE 200  
DUBUQUE IA 52001**

**Appeal Number: 05A-UI-04104-CT  
OC: 03/20/05 R: 04  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The Gannon Center filed an appeal from a representative's decision dated April 7, 2005, reference 01, which held that no disqualification would be imposed regarding Nancy Stuart's separation from employment. After due notice was issued, a hearing was held by telephone on May 26, 2005. Ms. Stuart participated personally. The employer participated by Marylou Baal, Chief Executive Officer.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Stuart was employed by The Gannon Center from September 3, 2004 until March 14, 2005 as a full-time medical records clerk. Her last day at work was March 10, 2005. Ms. Stuart did not report for work or contact the employer on Friday, March 11. She received a telephone message left by the employer that day but did not return the call. The reason for the absence is unknown.

Ms. Stuart was scheduled to work at 8:30 a.m. on Monday, March 14. She called the human resources office with the intent of asking for a leave of absence. The person she spoke to said Ms. Stuart would need to speak to her supervisor and offered to transfer the call but Ms. Stuart indicated she did not want to speak to the supervisor. She was told that the person she was speaking with did not have the authority to grant a leave of absence. After the call, Ms. Stuart went to Cedar Rapids to be with her daughter because the daughter was experiencing marital problems. The employer left a message that she was to contact the employer by the end of the day or she would not have employment. Ms. Stuart did not receive the message until she returned home late in the evening on March 14. She did not contact the employer in response to the message. She was discharged in a letter dated March 14. Ms. Stuart had not previously been disciplined regarding her attendance.

Ms. Stuart has received a total of \$1,323.00 in job insurance benefits since filing her claim effective March 20, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Stuart was separated from employment for any disqualifying reason. 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. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Stuart's two absences of March 11 and March 14 are sufficient to establish misconduct even though she had not been warned about her attendance. Her conduct regarding the two absences evinced a substantial disregard of the employer's standards. She knew or should have known that her conduct was contrary to the employer's standards even without the benefit of prior warnings.

Ms. Stuart could not recall why she was absent on March 11. She did not identify any circumstance that would have prevented her from calling the employer to report that she would be absent. Moreover, she acknowledged that she was home that day and received the message from the employer concerning her whereabouts. She could offer no justification for not returning the employer's call on March 11. Ms. Stuart was then absent on her next scheduled day, March 14. She refused to speak with her supervisor about the absence as requested by human resources. Furthermore, she did not have good cause for being absent on March 14. She was absent to be with her daughter. There was no emergency that required her to be with her daughter. Her daughter's marital problems constituted a personal matter and, as such, was not reasonable cause for missing work. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

For the reasons stated herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied. Ms. Stuart has received benefits since filing her claim. Based on the decision herein, the

benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated April 7, 2005, reference 01, is hereby reversed. Ms. Stuart was discharged for misconduct in connection with her employment. Benefits are withheld until such time as 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. Ms. Stuart has been overpaid \$1,323.00 in job insurance benefits.

cfc/pjs