

**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**

**JOLENE K KRUSE  
4188 FAIRVIEW DR APT 9  
BETTENDORF IA 52722-2227**

**ARH INC  
EMPLOYMENT SOURCES  
1815 GRANT ST  
BETTENDORF IA 52722**

**Appeal Number: 06A-UI-07475-HT  
OC: 02/26/06 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  
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Employment Sources, filed an appeal from a decision dated July 11, 2006, reference 02. The decision allowed benefits to the claimant, Jolene Kruse. After due notice was issued a hearing was held by telephone conference call on August 10, 2006. The claimant participated on her own behalf. The employer participated by Human Resources Consultant Samantha Hofman.

#### 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: Jolene Kruse was employed by ARH from April 24 until June 22, 2006. This is a placement agency which arranges temp-to-hire positions. Ms. Kruse was assigned to a law firm.

Human Resources Consultant Samantha Hofman was contacted by the on-site supervisor, Susan Perrin-Sallak regarding complaints of Ms. Kruse's attitude and work performance. Ms. Hofman counseled her by telephone on June 13, 2006, and notified her she could be removed from the assignment if there were any further problems.

On June 15, 2006, the claimant met with Ms. Perrin-Sallak to discuss the complaints and asked to know who had been making the complaints. The supervisor refused to provide that information as it was confidential. After that meeting she contacted Ms. Hofman and requested the claimant be removed.

The employer was unable to reach the claimant on June 16, 2006, and instead left a message on her voice mail over the weekend, and finally Ms. Kruse called back on Monday, June 19, 2006. At that time Ms. Hofman told her she had been removed from the assignment. On June 20, 2006, the claimant was asked to return the parking pass to the ARH offices but instead she returned it to the client. The same thing occurred when the employer asked her to provide the password information for the computer she used during the assignment, and again contacted the client rather than the employer. ARH does not allow employees to contact their former assignments but Ms. Kruse did so in spite of the policies.

Jolene Kruse has received unemployment benefits since filing an additional claim with an effective date of June 18, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

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

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 was removed from her assignment because of poor attitude and work performance. After being warned by the employer, Ms. Kruse confronted the on-site supervisor with a request to have the identity of the people who complained. The client found this unacceptable and requested her removal from the assignment.

Ms. Kruse was still an employee of ARH but she willfully disobeyed directed instructions to bring the parking pass and the password information to the employer rather than the client. This is insubordination as she refused to follow the direct instructions of her supervisor and abide by the regulations. 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 July 11, 2006, reference 02, is reversed. Jolene Kruse 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 \$1,043.70.

bgh/pjs