

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA G HAYNES
Claimant

APPEAL NO: 08A-UI-03377-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STAFFCO OUTSOURCE MANAGEMENT
Employer

**OC: 03/02/08 R: 04
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Staffco Outsource Management (employer) appealed a representative's March 28, 2008 decision (reference 02) that concluded Patricia G. Haynes (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 22, 2008. The claimant participated in the hearing. Theresa Jacobs appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. 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.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The employer is a temporary employment firm providing long-term staffing services to a Mt. Pleasant, Iowa manufacturing business client. The claimant started working for the employer on December 18, 2006. She worked full time as an assembler on the third shift, 11:00 p.m. to 7:00 a.m., Sunday night through Friday morning. Her last day of work was February 26, 2008. The employer discharged her on that date. The reason asserted for the discharge was excessive absenteeism.

The employer's attendance policy provides for discharge normally at nine points. However, the employer had made some exceptions for the claimant in the past and had given her additional warnings. During the twelve months prior to February 26 the claimant had incurred the following attendance incidents:

Date	Occurrence/reason if any	Points assessed
03/12/07	Absent, personal	1.0
03/17/07	Absent, personal	1.0
03/29/07	Left early, personal.	0.5
05/10/07	Absent, personal	1.0
06/10/07	Absent, personal	1.0
06/10/07	Absent, personal	1.0
06/16/07	Left early, personal	0.5
06/18/07	Left early, personal	0.5
06/28/07	Absent, personal	1.0
07/21/07	Absent, no transportation	1.0
11/27/07	Absent, personal	1.0
01/04/08	Left early for grandchildren	0.5
01/08/08	Absent, no transportation	1.0

The employer did not include any days for which the claimant called in absences due to illness, and did not include any of the days the claimant was off for bereavement leave due to a death in the family. After the January 8, 2008 absence the employer gave the claimant an additional attendance warning. On January 21 she was given a performance review which indicated that she was not meeting the employer's expectations on attendance, that she was at 13 points, and that she was being placed on probation for 30 work days; if she missed any additional work, she was subject to discharge.

On the morning of February 26 the claimant left work by 5:00 a.m. At the hearing she indicated that her reason for leaving was because she was dependent on a friend for a ride home and that friend had to pick her up by that time due to concerns about the weather. There was not such significant weather that day so as to preclude Ms. Jacobs, the human resources manager, to make it to work without issue by 7:30 a.m., and there was no notable calling off of work by employees that day.

The claimant established a claim for unemployment insurance benefits effective March 2, 2008. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$880.00.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

Iowa Code § 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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Tardies and leaving early are treated as absences for purposes of unemployment insurance law. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absences due to issues that are of purely personal responsibility including having reliable transportation are not excusable. Higgins, supra; Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The claimant's final absence was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that future absences could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

Iowa Code § 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's March 28, 2008 decision (reference 02) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 26, 2008. 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 is overpaid benefits in the amount of \$880.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs