

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN A HOPP
Claimant

APPEAL NO: 06A-UI-08406-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING
Employer

**OC: 07/02/06 R: 03
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Remedy Intelligent Staffing (Remedy), filed an appeal from a decision dated August 10, 2006, reference 03. The decision allowed benefits to the claimant, Susan Hopp. After due notice was issued, a hearing was held by telephone conference call on September 6, 2006. The claimant provided a telephone number of (319) 393-1477. That number was dialed at 3:00 p.m. and the only response was a voicemail. A message was left indicating the hearing would proceed without the claimant's participation unless she contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 3:13 p.m., the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The employer participated by Staffing Consultant Sadie Henry.

ISSUE:

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

FINDINGS OF FACT:

Susan Hopp was employed by Remedy from November 9, 2004 until June 1, 2006. Her last assignment began on March 4, 2005, at CCB Packaging. During the course of that employment, she received verbal warnings regarding her attendance.

Ms. Hopp's last day of work was Monday, May 15, 2006. She called in absent on May 16, 2006, saying she had a dentist's appointment at 12:30 p.m. and would not be in. She was not scheduled on May 17, 2006, and left a message on May 18, 2006, saying she would not be in, but did not give a reason. After that, she was no-call/no-show to work and did not respond to any of the messages left by the employer. Remedy considered her discharged as of June 1, 2006.

Susan Hopp has received unemployment benefits since filing a claim with an effective date of July 2, 2006.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

The claimant had been advised her job was in jeopardy as a result of her absenteeism. Ms. Hopp was then absent from work beginning May 16, 2006, and did not contact the employer for more than two weeks. Whatever the reason for her absence, it was not properly reported and must be considered unexcused. Under the provisions of the above Administrative Code section, this is misconduct for which 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 August 10, 2006, reference 03, is reversed. Susan Hopp 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 \$656.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw