

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AKEITA S JACKSON**  
Claimant

**APPEAL NO. 12A-UI-04762-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 04/01/12**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Express Services, filed an appeal from a decision dated April 23, 2012, reference 01. The decision allowed benefits to the claimant, Akeita Jackson. After due notice was issued, a hearing was held by telephone conference call on May 21, 2012. The claimant provided a telephone number where she could be contacted for the hearing. That number was dialed at 1:00 p.m. The only response was an automated message stating the voice mail box was full and the judge was not able to leave a message. By the time the record was closed at 1:09 p.m., the claimant had not called the Appeals Section and did not participate. The employer participated by Staffing Consultant Jim Cole.

**ISSUE:**

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

**FINDINGS OF FACT:**

Akeita Jackson was employed by Express Services from September 25, 2011 until April 13, 2012. An earlier assignment had ended on March 29, 2012, when the client company requested her to be removed. She had been told to perform a certain task by the supervisor and she said she did not feel like doing it.

Her last assignment began on April 11 and ended April 13, 2012, at Hawkeye Corrugated Box. She worked two days and was no-call/no-show to work on April 13, 2012. Express Services was notified by the client via e-mail and it also requested she be removed from the assignment. The day before, the claimant had told an employee of Hawkeye that this job was “okay for a few days” but she did not intend to “stick around.”

Staffing Consultant Jim Cole spoke with Ms. Jackson by phone later that day. She said her grandmother was in the hospital and she had not known who to call to report her absence. But Mr. Cole noted she had called Express Services while she was on other assignments to report an absence, so she already knew the protocol and the phone number to use. Mr. Cole notified

her at that time her assignment was ended and the employer would not be placing her for other assignments in the future.

Akeita Jackson has received unemployment benefits since filing a claim with an effective date of April 1, 2012.

**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.

The claimant had been advised her job was in jeopardy as a result of her poor work performance for the clients of Express Services. Her attitude of being unhelpful and insubordinate with client supervisors did not reflect well on the quality of personnel provided by Express Services.

The final occurrence was a no-call/no-show to work. The record establishes the claimant knew who to call, and the phone number to use, if she was going to be absent from work. She simply did not appear for work as required. Combined with the attitude displayed at this assignment and at the prior one, she had conducted herself in such a way as to alienate clients and co-workers. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of April 23, 2012, reference 01, is reversed. Akeita Jackson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw