

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARLOS D NELSON**

Claimant

**APPEAL NO. 09A-UI-01331-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDWEST ATHLETIC CLUB**

Employer

**OC: 12/21/08 R: 03  
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Midwest Athletic Club filed an appeal from a representative's decision dated January 23, 2009, reference 03, which held that no disqualification would be imposed regarding Carlos Nelson's separation from employment. After due notice was issued, a hearing was held by telephone on February 13, 2009. Mr. Nelson participated personally. The employer participated by Thera Nelson, Personal Training Director.

**ISSUE:**

At issue in this matter is whether Mr. Nelson was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Nelson was employed by Midwest Athletic Club for approximately six months ending December 21, 2008. He worked from 15 to 20 hours each week as a personal trainer. He was discharged for not performing the duties associated with his job.

Mr. Nelson had been going to General Electric (GE) two days each week to provide services. He accepted work coaching basketball during the same time frames he was to be at GE. He sent the employer an email on October 22 indicating he wanted to discontinue the GE schedule because he needed to spend more time on his studies. He had been told in an email of October 20 that he could adjust his hours at GE to accommodate his coaching schedule. He discontinued going to GE without notice to the employer. On December 3, a message was left with another employee asking Mr. Nelson to call Thera Nelson that day. The other individual confirmed that the message had been relayed. However, Mr. Nelson did not make the requested contact.

The employer met with Mr. Nelson on December 5 to conduct a disciplinary review. He was required to submit fitness assessment sheets on a monthly basis. As of December 5, he had not submitted the sheets for October and November. His stated reason for not submitting them

was that he did not have time. He was also required to submit daily communication notes on a weekly basis. He told the employer he had forgotten he was required to submit them. Mr. Nelson had failed to attend a monthly workshop in October but had not notified the employer in advance that he would be unable to attend. He did not attend because of his school schedule.

During the meeting of December 5, the employer also discussed with Mr. Nelson the fact that he had missed scheduled appointments with clients. He failed to appear for a scheduled appointment on November 24 and was absent due to lack of child care on December 1. He also missed appointments or appeared late for appointments because of his school schedule.

On December 17, Mr. Nelson was sent an email directing him to contact an individual who wanted to train with him. This individual notified the employer on December 23 that she still had not heard from Mr. Nelson. He again missed a meeting without prior notice on December 16. His supervisor sent him an email on December 17 asking why he did not attend the meeting. He responded on December 18 that he had forgotten about the meeting. He was notified of his discharge on December 23, 2008.

Mr. Nelson filed a claim for job insurance benefits effective December 21, 2008. He has received a total of \$974.00 in benefits since filing the claim.

#### **REASONING AND CONCLUSIONS OF LAW:**

Mr. Nelson was discharged by Midwest Athletic Club. 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. For reasons that follow, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Mr. Nelson should have known from the disciplinary meeting of December 5 that his job was in jeopardy due to the deficiencies discussed at that time. He knew or should have known that not following up with clients or potential clients was contrary to the employer's expectations. In spite of that, he failed to make the contact directed in the employer's email of December 17. Over five days had elapsed between when the directive was given and when the client reported that she had not been contacted.

Mr. Nelson also knew from the December 5 disciplinary meeting that he was expected to attend the monthly sales meetings and the monthly workshops. He had been warned on December 5 about missing the workshops in October and November. In spite of this, he failed to attend the December 16 workshop but gave the employer no advance notice he would be unable to attend.

Mr. Nelson had a pattern and practice of disregarding the standards he knew the employer expected of him. He knew what paperwork was expected and when it was to be submitted. However, he failed to submit the required paperwork. He knew he was expected to meet with clients but neglected to do so on multiple occasions. He discontinued providing services at GE without notice to his employer. Moreover, he told the employer he wanted to alter his GE schedule because his grades were slipping and he wanted to reduce his work so that he could get more help for his classes. However, he accepted a position coaching basketball for some of the same hours he would have spent at GE. In short, he gave up work his employer needed him to provide so that he could work and earn money elsewhere.

Mr. Nelson's conduct had the potential of causing the employer to lose business. Individuals are less likely to continue services if the individual they are to meet with does not appear at the scheduled time or will not return calls to schedule appointments. A business, such as GE, may

be unwilling to continue or renew services if services are discontinued without warning. The administrative law judge appreciates that Mr. Nelson was attending school. However, he also had an obligation to his employer to perform the duties for which he was hired. It was his responsibility to maintain a schedule of when he was to work or attend work-related functions. The fact that he sometimes forgot was not a good excuse for missing meetings. The fact that he was busy with school-related matters was likewise not justification for neglecting his work.

After considering all of the evidence, it is concluded that disqualifying misconduct has been established and benefit are denied. Mr. Nelson has received benefits since filing his claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Mr. Nelson will be required to repay benefits.

**DECISION:**

The representative's decision dated January 23, 2009, reference 03, is hereby reversed. Mr. Nelson was discharged for misconduct in connection with his employment. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Nelson will be required to repay benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs