

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHANTEL M PANTOJA
Claimant

APPEAL NO: 07A-UI-10363-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALORICA
Employer

**OC: 09/30/07 R: 01
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Alorica (employer) appealed a representative's October 31, 2007 decision (reference 01) that concluded Chantel M. Pantoja (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 29, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Jodi Heineman, a human resource generalist, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on June 4, 2007. The employer hired the claimant to work as a full time customer service agent. During her employment, the claimant received a verbal counseling about problems with her attendance on July 5, 2007. On July 23, the employer gave the claimant a written warning for continuing attendance problems. On July 28, the claimant received a final written warning for having ten unexcused absences since June 4, 2007.

On July 28, the employer informed the claimant that any further unexcused absences could result in her discharge. The employer also told the claimant that if she were unable to work because she was ill, the employer required her to bring a doctor's statement verifying she had been ill and her absence would be excused.

The claimant was absent from work on August 14 because her mother was ill. On August 15, the claimant notified the employer she was unable to work because she did not have any child care. On August 27, the claimant informed the employer she was unable to work because she had a doctor's appointment. As a result of these continued absences, the employer talked to the claimant again on August 28 and informed her that her final written warning for attendance problems was going to be extended 60 days.

On September 5, the claimant notified the employer she was unable to work because she was ill. The employer reminded the claimant to obtain a doctor's statement verifying she was ill so this absence could be excused. The claimant notified the employer on September 6 she was still ill and unable to work. On September 7, when the claimant called to report she was still unable to work because she was ill, the employer asked if she had gone to her doctor yet to obtain a doctor's statement. After the claimant indicated that she did not have a doctor's statement to verify she was ill, the employer discharged the claimant on September 7, 2007. for excessive absenteeism.

The claimant established a claim for unemployment insurance benefits during the week of September 30, 2007. She filed claims for the weeks ending October 6 through November 17, 2007. The claimant received her maximum weekly benefit amount of \$189.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7). Even though the claimant notified the employer when she was unable to work, the evidence does not establish that the claimant had a justifiable reason for being absent from work on September 5, 6 and 7 after she received a final written warning for attendance.

Although the employer informed and reminded the claimant that she was required to provide the employer with a doctor's statement verifying she was ill, the claimant told the employer she did not have such a statement. As a result, a preponderance of the evidence establishes the claimant was absent on September 5, 6 and 7 for unexcused reasons. The employer discharged the claimant for reasons constituting work-connected misconduct. As of September 30, 2007, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending October 6 through November 17, 2007. The claimant has been overpaid \$1,323.00 in benefits she received for these weeks.

DECISION:

The representative's October 31, 2007 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 30, 2007. 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 has been overpaid and must repay a total of \$1,323.00 in benefits she received for the weeks ending October 6 through November 17, 2007.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs