

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTI M BROOKS
Claimant

APPEAL NO. 09A-UI-08600-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAC INC
Employer

OC: 05/03/09
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

DAC, Inc. filed an appeal from a representative's decision dated June 8, 2009, reference 01, which held that no disqualification would be imposed regarding Kristi Brooks' separation from employment. After due notice was issued, a hearing was held by telephone on July 16, 2009. The employer participated by Tina Miller, Human Resources Director, and Brenda Behrens, Supervisor. Exhibits One through Six were admitted on the employer's behalf. Ms. Brooks did not respond to the notice of hearing.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Brooks was employed by DAC, Inc. from October 1, 2008 until May 1, 2009 as a full-time supported living specialist. She was discharged because of her attendance. Ms. Brooks received her first warning on November 11 because she was absent on November 6 due to illness. She received a second warning and two-day suspension on January 12 after she missed an additional three days of work. She accumulated an additional two absences and received another warning and a three-day suspension on February 27.

Ms. Brooks received her final warning regarding attendance on April 23. She had missed one day since the previous warning. The decision to discharge was based on the fact that she was approximately 30 minutes late on May 1 because she overslept. She was discharged the same day. She had been late reporting to work on other occasions during the course of her employment and the issue had been discussed with her. Attendance was the sole reason for the discharge.

Ms. Brooks filed a claim for job insurance benefits effective May 3, 2009. She has received a total of \$1,971.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

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. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from benefits if she was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work.

Ms. Brooks worked for DAC, Inc. for seven months. During that time, she received four warnings regarding her attendance. She was on notice that her attendance, including tardiness, was not acceptable. In spite of the warnings, she did not take those steps necessary to ensure her timely arrival at work. The final incident of tardiness was due to oversleeping, which is not reasonable grounds for missing work. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Since there had been other occasions of tardiness prior to May 1 and given the relatively short duration of the employment, the administrative law judge concludes that the employer has sustained its burden of proving that Ms. Brooks should be disqualified from receiving benefits.

Ms. Brooks has received benefits since filing her 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 benefits already received will have to be repaid.

DECISION:

The representative's decision dated June 8, 2009, reference 01, is hereby reversed. Ms. Brooks was discharged for misconduct in connection with her employment. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Brooks will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css