

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOY R UMUHIRE**  
Claimant

**APPEAL NO. 09A-UI-10823-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MOSAIC**  
Employer

**Original Claim: 06/21/09  
Claimant: Respondent (2-R)**

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

**STATEMENT OF THE CASE:**

Mosaic filed an appeal from a representative's decision dated July 23, 2009, reference 01, which held that no disqualification would be imposed regarding Joy Umuhire's separation from employment. After due notice was issued, a hearing was held by telephone on August 13, 2009. Ms. Umuhire participated personally and was represented by Christopher Rottler, Attorney at Law. Exhibit A was admitted on Ms. Umuhire's behalf. The employer participated by Daniella Kenzvic, Direct Support Manager; Jen Zajicek, Associate Director; Kelly Thompson, Program Coordinator; and Nancy Seel, Human Resources Manager. The employer was represented by Lynn Corbeil of TALX Corporation. Exhibits One through Nine were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Umuhire 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. Umuhire was employed by Mosaic from September 28, 2006 until April 6, 2009. The employer provides services to adults with mental and physical disabilities. Ms. Umuhire was a full-time direct support associate and worked in a home shared by consumers. She was discharged from the employment.

The decision to discharge Ms. Umuhire was based on her actions of March 31, 2009. She notified her supervisor that she had lost her bank debit card and believed it had been left at a gas station she went to earlier. One of the consumers, Diana, gets coffee every day between 3:00 and 4:00 p.m. Ms. Umuhire was given permission to return to the station to look for her debit card and was asked to take Diana with her so that she could get coffee. Ms. Umuhire left in a company car with Diana but did not mention any other planned stops.

Ms. Umuhire left work between 3:15 and 3:30 and did not return until 5:20 p.m. In addition to getting coffee for Diana, she also spent from 20 to 30 minutes at her doctor's office at Broadlawns Medical Center. She saw her doctor because she had questions regarding the effects of certain medications on her pregnancy. She had Diana with her when she visited with the doctor. When she returned, she did not mention to the supervisor that she had taken care of personal business while out. She did not deduct the time for the doctor's appointment on her time card. Ms. Umuhire had her cell phone with her at all times on March 31. Her scheduled hours were from 3:00 until 11:00 p.m. The employer's policies prohibit personal business while on the clock and prohibit use of a company vehicle for personal errands.

Ms. Umuhire was suspended on April 1 and notified of her discharge on April 6, 2009. Her only other disciplinary actions were a written warning regarding attendance in December of 2006 and a verbal counseling on January 2, 2009 when a consumer in her care failed to receive a dosage of ulcer medication.

Ms. Umuhire filed a claim for job insurance benefits effective June 21, 2009. She has received a total of \$3,501.00 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). For reasons that follow, it is concluded that the employer has satisfied its burden of proof. Ms. Umuhire used a company car to conduct personal business while on the clock. There was no emergency that required her to see her doctor on the afternoon of March 31. Although she had her cell phone with her, she did not call her supervisor to report that she would be making a stop for personal business before returning to work. Nor did she mention the doctor's visit when she returned to work or deduct it from her hours. These are not the actions of one acting in good faith.

Ms. Umuhire's actions constituted time card theft, as it had the potential of the employer paying her for approximately 30 minutes during which she was not performing services for the employer but attending to a personal matter. Moreover, she had ample time before her 3:00 p.m. shift to conduct personal business. Not only did Ms. Umuhire conduct personal business while on the clock, she had a consumer accompany her while she did so. Her job was to provide services to the consumer. Having Diana wait with her while she spoke to the doctor was not a service intended to benefit Diana. For the reasons stated herein, the administrative law judge concludes that the conduct of March 31 constituted a substantial disregard of the standards Ms. Umuhire knew or should have known were expected of her. As such, benefits are denied.

Ms. Umuhire 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 July 23, 2009, reference 01, is hereby reversed. Ms. Umuhire was discharged for disqualifying misconduct. 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. Umuhire 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/kjw