

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**AMBER R STROMAN
1210 – 12TH ST
ONAWA IA 51040**

**MID-STEP SERVICES INC
4303 STONE AVE
SIOUX CITY IA 51106**

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**Appeal Number: 04A-UI-04206-B4T
OC: 03-21-04 R: 01
Claimant: Appellant (5)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Amber R. Stroman appealed from an unemployment insurance decision dated April 9, 2004 reference 01 that held in affect the claimant was not eligible to receive unemployment insurance benefits and the employer's account would not be charged. The records indicated Amber R. Stroman voluntarily left her employment with Mid-Step Services, Inc. on March 23, 2004 by failing to report for work for three days in a row and not notifying the employer of the reason.

A telephone conference hearing was scheduled and held on April 27, 2004. Amber R. Stroman participated and was represented by Richard Sturgeon, Worker's Have Rights Too Advocate. Jan Hackett, Human Resource Coordinator, participated on behalf of Mid-Step Services, Inc.

Official notice was taken of the unemployment insurance decision dated April 9, 2004 reference 01 together with the pages attached thereto (20 pages in all).

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Amber R. Stroman was employed with Mid-Step Services, Inc. from March 24, 2003 to on or about March 11, 2004. The claimant performed the job duties of a residential living assistant for mentally handicapped residents or patients.

The claimant received a copy of the Mid-Step Services, Inc. handbook and knew or should have known of the disciplinary policy and procedures which included justification for a separation of employment because of being absent two consecutive days without notifying the supervisor or administrator.

During the tenure of the claimant's employment, she was absent on numerous occasions on a no-call/no-show basis as well as being absent because of illness on occasion. On February 19, 2004, the claimant was issued a written warning because of incidents of absenteeism on five occasions from September 8, 2003 through February 16, 2004. The claimant was clearly warned that future violation of the policies could result in disciplinary action up to and including termination.

A notice of unscheduled absenteeism constituting a warning to the claimant that her job was in jeopardy because of three unscheduled absences that occurred on May 27, 2003, September 8, 2003, and October 28, 2003. Again, the claimant was warned that such conduct could result in her termination of employment. The claimant read the notice and understood it and signed it on November 9, 2003. A notice of unscheduled absenteeism was issued and signed by the claimant on October 7, 2003 because she had been absent on three occasions from April 11, 2003 through September 8, 2003 and was absent on September 26, 2003. Once again the claimant was warned that such conduct could result in discipline up to and including discharge.

A document entitled "Supervisory Notation," which constituted a clarification of expectation on the part of the claimant, was issued and signed by the claimant on June 6, 2003. The claimant was reprimanded in effect because she had not performed her job duties in a correct manner and a consumer was left unattended for one hour while she was on duty. The claimant concurred with the employer's statement and signed the document on June 10, 2003. See page 13 attached to the decision under consideration. The evidence and testimony in the record establishes that the claimant had little or no regard for reporting for work when scheduled or contacting her supervisors in a timely manner.

On March 19, 2004, the claimant provided a doctor's excuse received from a licensed and practicing physician at Family Medicine Clinic PC. An examination of the doctor's excuse clearly indicates that it was modified by someone. The document clearly indicates that it was issued on May 18, 2004 and excused Amber R. Stroman from work from March 9, 2004 through March 24, 2004. The record clearly establishes that the doctor's excuse presented to management by the claimant on March 19, 2004 had been altered to excuse the claimant from March 18, 2004 through March 29, 2004; when the original excuse shown at page 8 clearly discloses the excuse from work was from March 9, 2004 through March 22, 2004. The presentation of the altered excuse constitutes the claimant should have reported for work on March 23, 2004 and failed to report for work on March 23 and March 24, 2004. The claimant

was clearly absent on two occasions without reasonable cause or because of illness in violation of the company rule. In addition, the claimant committed a fraudulent act by modifying the doctor's release in order to extend her time off. Such conduct constitutes a fraudulent act on the part of the claimant.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The evidence in the record establishes that the claimant had little or no regard with respect to reporting for work when reasonably scheduled by the employer. She had been warned on

numerous occasions regarding her absenteeism and tardiness record. In addition, the claimant committed a fraudulent act by modifying the doctor's statement in order to extend her leave of absence due to illness. Such conduct constitutes fraud. The administrative law judge concludes that Amber R. Stroman voluntarily left her employment with Mid-Step Services, Inc. on March 23, 2004 without good cause attributable to the employer and in addition is disqualified for misconduct by reason of the altered doctor's statement which was modified to extend her leave of absence through a period of time that was not justifiable by the physician.

The administrative law judge concludes that Amber R. Stroman was separated from her employment by voluntarily leaving her employment and being discharged for misconduct in connection with her employment on or about March 24, 2004.

DECISION:

The unemployment insurance decision dated April 9, 2004, reference 01, is modified. Amber R. Stroman was separated from her employment because of a voluntary quit and a fraudulent act of misconduct on or about March 24, 2004 within the intent and meaning of the forgoing sections of the Iowa Code. Unemployment insurance benefits are denied until such time as Amber R. Stroman has requalified under the provisions of the Iowa Employment Security Law.

sb/b