

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA A PRINE
Claimant

APPEAL NO. 07A UI-00784-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNICATION DATA SERVICES INC.
Employer

**OC: 12/24/06 R: 04
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated January 18, 2007, reference 01, which allowed benefits. After due notice was issued, a hearing was held by telephone on February 6, 2007. Although duly notified the claimant did not participate. Employer participated by Doris Keldgord and Phyllis Korschot. Exhibits One through Five were received in evidence.

ISSUE:

At issue in this matter is whether the claimant was discharged for misconduct in connection with her work and whether the claimant has been overpaid unemployment insurance benefits.

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: Ms. Prine was employed by this company from September 2006 until December 7, 2006, when she was given the option of resigning in lieu of being discharged. The claimant worked as a sorter/operator and was paid by the hour. The claimant was separated from employment based upon her failure to provide notification of impending absences on December 4 and December 5, 2006. The claimant knew that she was subject to discharge if she did not report or provide notification on two or more occasions. The claimant provided no explanation for failure to provide notification. The reason for the claimant's absence was not work related.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the claimant was separated from employment under disqualifying conditions when she failed on two consecutive nights to report for work and did not provide notification as required to her employer. The claimant provided no explanation for her failure to notify and was aware that that conduct would result in her termination from employment. Although the claimant may have been ill she nonetheless had an obligation to provide notification unless some extenuating circumstances prevented her from doing so. Although given the opportunity to participate in the hearing and provide sworn testimony, the claimant declined to do so.

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.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The Administrative law judge holds that the claimant is overpaid unemployment insurance benefits in the amount of \$501.00 pursuant to Iowa Code section 96.3-7 because a decision has determined the claimant is ineligible to receive benefits due to a disqualifying separation.

DECISION:

The representative's decision dated January 18, 2007, reference 01, is hereby reversed. The claimant was separated under disqualifying conditions. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided the claimant is otherwise eligible. Claimant is overpaid unemployment insurance benefits in the amount of \$501.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

tpn/css