

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER ROSE**

Claimant

**APPEAL NO. 13A-UI-09063-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**

Employer

**OC: 07/07/13**

**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

The University of Iowa (employer) appealed an unemployment insurance decision dated July 29, 2013, reference 02, which held that Jennifer Rose (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 25, 2013. The claimant provided a telephone number but was not available when that number was called for the hearing, and therefore, did not participate. The employer participated through Benefits Specialist Mary Eggenburg and Nurse Manager Denise Kirk.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time staff nurse from January 10, 2011 through June 27, 2013. She applied for and was granted medical leave under the Family Medical Leave Act (FMLA) in May 2013. The claimant was absent from June 3, 2013 through June 27, 2013 without proper medical certification. She called in her absence on June 3, 2013 due to a new medical condition and the nurse manager advised her that day that she would have to complete new FMLA certification. The FMLA paperwork was sent to her on June 4, 2013 and she was given until June 15, 2013 to turn it in but failed to do so. An extension was granted and she was given until June 25, 2013 to turn the paperwork in but again failed to do so. The claimant was terminated on June 27, 2013 for excessive absences and failure to turn in medical documentation.

The claimant filed a claim for unemployment insurance benefits effective July 7, 2013 and has received benefits after the separation from employment.

## **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on June 27, 2013 for excessive unreported absences and failure to provide required medical certification. She knew how to follow protocol regarding FMLA certification and failed to do so. Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant did not properly report her absences. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

## **DECISION:**

The unemployment insurance decision dated July 29, 2013, reference 02, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs