

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER E MASTIN

Claimant

APPEAL NO. 07A-UI-01094-NT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

**OC: 12/31/06 R: 01
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 decision of a representative dated January 22, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 14, 2007. The claimant participated. The employer participated by Janice Foote, Human Resource Coordinator and Marsha Moestchen, Director of Nursing. Exhibits One through Ten were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record finds: The claimant worked for the Good Samaritan Society from November 22, 2000 until January 3, 2007, when she was discharged. Ms. Mastin held the position of LPN and was paid \$14.00 per hour. Her immediate supervisor was Marsha Moestchen.

The claimant was discharged after being excessively absent and tardy after being warned. Ms. Mastin had been absent on numerous occasions for personal reasons, which included personal days, moving, and lack of babysitters in addition to numerous absences due to her personal illness and the illness of her children. The final instance that resulted in the claimant's termination took place on January 2, 2007, when the claimant called indicating that she had "no babysitter." The claimant was on a final warning for attendance at that time and was aware that additional attendance infractions could result in her termination. The claimant's repeated absence caused staffing issues for the employer on a repeated basis and the employer believes that the claimant's personal lifestyle may have played a significant part in the claimant's failure to report to work on a regular basis and the claimant's failure to perform at a level of competency that she had previously demonstrated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant was discharged under disqualifying conditions. The evidence in this case establishes that Ms. Mastin had been repeatedly warned by the employer regarding her poor attendance and lack of punctuality. The claimant's repeated absences and tardiness caused repetitive staffing issues for the employer. In addition to the claimant's reported absences for her personal illness and the illness of her children, the evidence establishes the claimant also called in for absence related to issues of personal responsibility such as lack of childcare and taking time off for personal reasons on scheduled workdays. The employer's witness also testified that it was her belief that the claimant's personal lifestyle played a part in the claimant's repeated absenteeism and, thus, was a factor of personal responsibility. Ms. Mastin did not dispute or deny the employer's assertion.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. Absenteeism also encompasses conduct such as tardiness. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The administrative law judge finds that the employer has sustained its burden of proof in showing that a substantial number of the claimant's attendance infractions were matters of personal responsibility within the control of the claimant and, thus, are not considered excused. The administrative law judge finds that the employer has sustained its burden of proof in establishing that the claimant's discharge took place due to misconduct in connection with the work. Benefits are denied.

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 the claimant is overpaid unemployment insurance benefits in the amount of \$3,010.00 pursuant to Iowa Code section 96.3-7 because a decision has determined that the claimant is ineligible to receive benefits due to a discharge for misconduct in connection with the work.

DECISION:

The decision of the representative dated January 22, 2007, reference 01, is reversed. The claimant was discharged for misconduct. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$3,010.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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