

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

QUERIDA R PETERSEN  
306 2<sup>ND</sup> AVE  
LOW MOOR IA 52757

APAC CUSTOMER SERVICES  
OF IOWA LLC  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-08060-RT  
OC: 07-03-05 R: 04  
Claimant: Respondent (2)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The employer, APAC Customer Services of Iowa LLC, filed a timely appeal from an unemployment insurance decision dated July 26, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Querida R. Petersen. After due notice was issued, a telephone hearing was held on August 23, 2005, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she or any of her witnesses could be reached for the hearing, as instructed in the notice of appeal. Angie Jacobs, Administrative Assistant, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a part-time telephone service representative (TSR), from September 27 2004 until she was discharged on June 6, 2005 for poor attendance. The employer has a policy that an employee must call in and notify the employee's supervisor before the employee's scheduled shift, if that employee is going to be absent or tardy. On June 2 and 3, 2005, the claimant was absent, but provided the employer no reason. She did promptly report these two absences. If the employee will provide to the employer documentation from a Doctor as to an illness, the employer will consider that, but the claimant never provided such documentation. On May 4, 10, 11, 16, and 23, 2005, the claimant left work early. The claimant gave no reasons why and there is no evidence that she had permission to do so. Often, employees just don't return to work after their break. During that period of time, work was available to the claimant and the claimant was not sent home. On April 23, 2005, the claimant was absent and did not properly report this absence and it was therefore a no call, no show. On April 21, 2005, the claimant was absent but promptly reported this as a personal illness. On April 19, 2005, the claimant left work early and did not provide a reason and there is no evidence that the claimant had permission. During the week of April 11 through the 16, the claimant did not work a full schedule any day. On April 12, 2005, the claimant received a verbal warning for her attendance. On April 20, 2005, the claimant received a written warning for her attendance. On April 25, 2005, the claimant received a final written warning for her attendance.

Pursuant to her claim for unemployment insurance benefits filed effective July 3, 2005, the claimant has received unemployment insurance benefits in the amount of \$363.00 as follows: \$75.00 per week for 4 weeks, from benefit week ending July 9, 2005 to benefit week ending August 6, 2005; and for benefit week ending July 23, 2005, the claimant received \$63.00 reporting earnings of \$30.00.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer's witness, Angie Jacobs, Administrative Assistant, credibly testified, and the administrative law judge concludes, that the claimant was discharged on June 6, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. Excessive unexcused absenteeism is disqualifying misconduct and includes tardies and necessarily requires the consideration of past acts and warnings. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism. As set out in the findings of fact, the claimant had two absences on June 2 and 3, 2005, for which she gave no reason. The claimant did properly report these absences. In May, the claimant had five occasions when she left work early and provided no reasons and there was no evidence that the claimant had permission to do so. Ms. Jacobs credibly testified that often employees will simply not show up after a break. On April 23, 2005, the claimant was absent as a no-call, no-show when she did not inform the employer. The claimant also left work early on April 19, 2005, and provided no reason and there is no evidence that she had permission. During the week of April 11 through the 16, 2005, the claimant did not work a full day, any day. The claimant received three warnings for her attendance. Ms. Jacobs credibly testified that if the claimant would have provided documentation from a physician about personal illnesses, that would have been considered, but the claimant never did. On the record here, the administrative

law judge is constrained to conclude that the absences and occasions when the claimant left work early as set out above, were not for reasonable cause or personal illness and were excessive unexcused absenteeism. The administrative law judge notes that the claimant specifically had three warnings, the final written warning occurring on April 25, 2005, and thereafter, the claimant left work early, five times in May of 2005, and then was absent on June 2 and 3, 2005. Accordingly, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

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 concludes that the claimant has received unemployment insurance benefits in the amount of \$363.00 since separating from her employer on or about June 6, 2005, and filing for such benefits effective July 3, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa Law.

#### DECISION:

The representative's decision of July 26, 2005, reference 01, is reversed. The claimant, Querida R. Petersen, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism. She has been overpaid unemployment insurance benefits in the amount of \$363.00.

dj/pjs