

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SWAMECA L SEALS

Claimant

APPEAL NO. 08A-UI-04343-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHRISTIAN OPPORTUNITY CENTER

Employer

**OC: 04/06/08 R: 02
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Christian Opportunity Center (COC), filed an appeal from a decision dated April 25, 2008, reference 01. The decision allowed benefits to the claimant, Swameca Seals. After due notice was issued, a hearing was held by telephone conference call on May 20, 2008. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Human Resources Director Angela Smith, Program Coordinator Sally Uitermarkt and Associate Manager Sheryl Van Wyngarden.

ISSUE:

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

FINDINGS OF FACT:

Swameca Seals was employed by COC from August 9, 2007 until March 31, 2008, as a part-time living skills advisor. During the course of her employment she received several verbal and two written warnings regarding her attendance. She was chronically late or absent from work and missed several mandatory staff meetings.

On February 28, 2008, a staff meeting was held which the claimant attended. At the meeting the date for the next staff meeting was announced for March 27, 2008. In addition to the announcement, the date was noted in the minutes of the staff meeting, a copy of which the claimant received and which was also posted in the house where she worked.

Ms. Seals was issued a final written warning on March 4, 2008, by Program Coordinator Sally Uitermarkt, because she had been late for a “whole staff” meeting on February 15, 2008, due to oversleeping. The majority of her absences and tardies were due to oversleeping, transportation problems and lack of childcare. The warning notified her that her job was in jeopardy if her attendance did not improve.

On March 27, 2008, the claimant was absent from the staff meeting. Later that day the human resources director and Ms. Uitermarkt met with the claimant to suspend her for another incident of non attendance at a staff meeting. She stated she did not realize the date of the meeting had been changed and admitted she had not been paying attention at the February 2008 staff meeting when the date was announced and had not read the minutes of that meeting when she received them.

The employer reviewed her past disciplinary actions and attendance records. The decision was made to discharge her and she was notified by the employer on March 31, 2008.

Swaneca Seals has received unemployment benefits since filing a claim with an effective date of April 6, 2008.

REASONING AND CONCLUSIONS OF LAW:

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.

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 claimant had been advised her job was in jeopardy as a result of her absenteeism and tardiness. In spite of the warnings the claimant did not attend the schedule staff meeting on March 27, 2008, because she had not been paying attention at the time it was announced in February, and had not read the posted minutes which also specified the date. Her attendance problems were due to person issues such as oversleeping, transportation and childcare problems which are not considered excused. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The claimant is disqualified.

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 claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of April 25, 2008, reference 01, is reversed. Swameca Seals is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,020.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css