

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUTH A GONZALEZ
Claimant

APPEAL NO. 08A-UI-07624-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESSIBLE MEDICAL STAFFING
Employer

**OC: 11/25/07 R: 03
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated August 14, 2008, reference 08, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on Monday, September 8, 2008. The claimant supplied a telephone number and was reached but disconnected and did not answer repeated telephone calls or call in as instructed. The employer participated by Mindy Butler, Administrator.

ISSUE:

The issues in this matter are whether the claimant was discharged for misconduct in connection with her work and whether the claimant is 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 this temporary employer beginning in March 2008. The claimant was last assigned to work at the Osceola Nursing Home for an assignment on April 12 and April 13, 2008. Ms. Gonzalez reported for the Saturday, April 12 shift but left work early claiming that she was dizzy and that her wrist hurt. On Sunday, April 13, 2008, Ms. Gonzalez contacted Mindy Butler to report that the nursing facility was sending her home early. Later that day the client nursing facility repeatedly attempted to call Accessible Medical Staffing to determine where Ms. Gonzalez was as she could not be found in the facility and had not been given permission nor instructed to leave.

Although Accessible Medical Staffing had left repeated messages on the claimant's cell phone and home numbers for the claimant to call them back, she did not do so. When confronted the following Monday with the allegations that the claimant had left without authorization and had not returned repeated telephone calls, the claimant had no response. When the employer received the claimant's pay slip that had not been signed indicating authorization to leave early

or that the claimant had completed her shift, she was discharged from further work with the company.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Gonzalez was discharged for misconduct in connection with the employment. It does.

The evidence in the record establishes that the claimant had left work early both on April 12 and April 13, 2008 and that the claimant's leaving on April 13, 2008 was without the authorization of her employer, the temporary staffing agency, or the nursing facility where she had been assigned that day. An investigation determined that the claimant had not been told to leave early nor authorized to do so and that the claimant had, in effect, walked off the job leaving the nursing facility understaffed. The claimant also had not returned repeated calls and messages left by Accessible Medical Staffing at the claimant's residence and to her cell phone.

The administrative law judge concludes, based upon the evidence in the record, that the claimant's conduct showed a willful disregard for her employer's interests and standards of behavior and thus was disqualifying conduct under the provisions of the Iowa Employment Security Act.

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.

For the reasons stated herein, the administrative law judge finds the claimant was discharged for misconduct. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated August 14, 2008, reference 08, is hereby reversed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided that she is otherwise eligible. The matter of the

claimant's potential overpayment is remanded to the Claims Division for determination as to whether there has been an overpayment, the amount of the overpayment and whether the claimant will have to repay those benefits.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs