

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RHONDA M FREEMONT
Claimant

APPEAL NO. 08A-UI-06566-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

G-SUB INCORPORATED
Employer

OC: 06/08/08 R: 01
Claimant: Respondent (2/R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

G-Sub Incorporated (employer) appealed a representative's July 8, 2008 decision (reference 01) that concluded Rhonda M. Freemont (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 30, 2008. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Laura Gmeiner, an owner, appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer again on November 3, 2005. The claimant worked part-time as a sandwich artist. The claimant's job was not in jeopardy prior to June 2, 2008.

On June 1, 2008, the claimant notified the employer that she would not be at work that day as scheduled and asked to use sick pay for the hours she did not work. The claimant was scheduled to work June 2, 3, 6, 7, and 9. She did not call or report to work any of these days. (Employer Exhibit One.)

On June 10, 2008, the claimant called the employer sometime after 11:00 a.m., or after the start of her scheduled shift. The claimant told the employer she had been ill and in the hospital. When the claimant had not reported to work or notified the employer that she was unable to work for five consecutive scheduled days, the employer terminated her employment on June 9,

2008. On June 10, 2008, the employer told the claimant she would be scheduled again as soon as she provided the employer with a doctor's statement indicating she was again able to and available for work. The claimant did not provide the requested documentation. The claimant again contacted the employer on June 16, 2008. The employer again told the claimant that the employer would rehire her and put her on the schedule as soon as she brought in a doctor's statement indicating she was medically able to return to work. (Employer Exhibit One.) The claimant did not contact the employer again or ever provide the requested doctor's statement.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-1, 2-a. The employer ended the claimant's employment on June 9, after she failed to report to work or contact the employer for five consecutive scheduled days.

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7). The facts establish that the claimant did not properly notify the employer she was unable to work June 2 through June 10. Although the claimant asserted on June 10 that she had been hospitalized, she never provided the employer with proof of her hospitalization. The employer even gave the claimant a second chance and told her she would be rehired and placed back on the schedule if she provided the employer with a doctor's statement indicating she was medically able to work. The claimant did not do this either.

Based on the evidence presented during the hearing, on June 9, 2008, the employer discharged the claimant for work-connected misconduct. As of June 8, 2008, the claimant is not qualified to receive benefits.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. Iowa Code § 96.3-7.

As a result of the decision in this case, the claimant is not eligible to receive benefits as of June 8, 2008. The issues of whether the claimant has been overpaid and whether any overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Claims section.

DECISION:

The representative's July 8, 2008 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of June 8, 2008. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

The issue of whether the claimant has been overpaid and whether the overpayment can be waived is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css