

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RENAE L ABRAHAM
Claimant

APPEAL NO. 08A-UI-05509-S2T

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

US BANK
Employer

**OC: 11/25/08 R: 12
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 4, 2008, reference 02, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on June 30, 2008. Claimant participated personally. Employer participated through Cheryl Miller, Human Resources Manager; Chantana Giere, Supervisor of Case Processing; Scott Orn, Operations Manager; and Dionna Martel, Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time Customer Service Representative 3 from February 11, 2008, until April 29, 2008. The claimant signed for receipt of the employer's Code of Ethics and Attendance Policy on February 13, 2008.

The claimant was absent due to her own illness eight times. She was absent due to her four-year-old child's illness three times. One of those times, she was tardy because the claimant was giving her child a regularly scheduled nebulizer treatment. The claimant was absent eight times because her father was ill and died. The claimant's superiors told her these absences would not count against her. She left early once to attend to housing needs. On April 28, 2008, the employer told the claimant that attendance was important and she needed to appear for her regularly scheduled work.

On April 30, 2008, the claimant telephoned the employer and said she would be late because of car repair issues. The employer did not receive the other messages the claimant left at 11:30 a.m. and 1:30 p.m. The employer telephoned the claimant. She said she was getting her car fixed. At 4:00 p.m. the claimant appeared at work to get her paycheck. The employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct,

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. Absenteeism arising out of matters of purely personal responsibilities such as child care and transportation are not excusable. Higgins v. Iowa Department of Job Service, 275 N.W.2d 187 (Iowa 1984).

The claimant's final absence was due to her lack of transportation, a personal issue. The claimant's absence due to lack of transportation arises from a purely personal responsibility. The claimant made no attempt to seek other transportation. Therefore, the claimant's absence is not excusable. The employer has met its burden of proof to show misconduct. The claimant is not eligible to receive unemployment insurance 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The June 4, 2008, reference 02, representative's decision is reversed. The claimant is not eligible to receive unemployment insurance benefits, because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid unemployment insurance benefits in an amount of \$199.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw