

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JODEAN A BRIGHTON**  
Claimant

**APPEAL NO. 07A-UI-09152-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FLEETGUARD INC**  
Employer

**OC: 08/26/07 R: 02  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated September 19, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 10, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Anita Vogt participated in the hearing on behalf of the employer with a witness, Beth Nyguard.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a production worker from August 10, 2004, to August 22, 2007. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer before the start of their shift if they were not able to work as scheduled.

Employee are given 40 hours of unplanned absence at the beginning of each calendar year. After exhausting these hours, they are subject to progressive discipline. Time off due to leave under the Family and Medical Leave Act (FMLA) is not counted as unplanned absence. The claimant received a verbal warning due to exceeding the 40 hours of unplanned absence on March 17, 2006. She received a written warning for this on March 22, 2006. She received a final warning for this on June 30, 2006.

On August 12, 2007, the claimant again exceeded the 40 hours of unplanned absence but received a second final warning on August 16 because she brought in a medical excuse. The claimant knew she would be discharged if she had another unplanned absence.

The claimant was scheduled to work from 5:00 a.m. to 3:30 p.m. on August 23, 2007. The night before, the claimant's son informed her that he was required to purchase his tools for college the next day. The claimant knew she would be discharged for any additional unplanned

absence but decided it was more important that she go with her son and his father to purchase the tools for college. Because she knew she was going to lose her job, she did not call in before her shift to notify the employer that she would not be at work. Instead, she called in at about 8:00 a.m. to say good bye to her supervisor. Her supervisor confirmed that she was discharged because of her absence. Although the claimant had approved intermittent FMLA, none of the unplanned absences were the result of this health condition.

The claimant filed a new claim for unemployment insurance benefits with an effective date of August 26, 2007. She filed for and received a total of \$1,119.00 in unemployment insurance benefits during the weeks between August 26 and October 6, 2007.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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 received repeated warnings for excessive absenteeism. She knew her job was in jeopardy yet was absent on August 23. This absence was not due to illness or other reasonable grounds. She said she had to attend the tool fair to purchase the tools for her son, yet said she had gone there with her son and his father. She did not explain why her son and his father could not have gone to the tool fair themselves other than saying the tool fair was for parents too. Furthermore, she failed to properly notify the employer about her absence on August 23. Work-connected misconduct has been proven in this case.

The next issue in this case is whether the claimant was overpaid 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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$1,119.00 in unemployment insurance benefits during the weeks between August 26 and October 6, 2007.

**DECISION:**

The unemployment insurance decision dated September 19, 2007, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$1,119.00 in unemployment insurance benefits, which must be repaid.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw