

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**TEDDREKA H COLEMAN
1107 MAPLEWOOD DR APT 3
CEDAR FALLS IA 50613**

**ABCM CORPORATION
PO BOX 436
HAMPTON IA 50441-0436**

**Appeal Number: 04A-UI-04393-RT
OC: 03-21-04 R: 03
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The employer, ABCM Corporation, filed a timely appeal from an unemployment insurance decision dated April 9, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Teddreka H. Coleman. After due notice was issued, a telephone hearing was held on May 11, 2004 with the claimant participating. Daniel Larmore, Administrator; Toi Wilder, CNA; and Michelle Moore, ICFMR Program Coordinator; participated in the hearing for the employer. Cara Mayner was available to testify for the employer but not called because her testimony would have been repetitive and unnecessary. Employer's Exhibits 1 through 3 were admitted

into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits 1 through 3, the administrative law judge finds: The claimant was employed by the employer as a part-time developmental assistant from December 9, 2003 until she was discharged on March 25, 2004. The claimant was discharged for a fourth employee warning and violation arising out of an incident on March 17, 2004. On that day the claimant got into an altercation with a coworker, Lamaurice Kirk, with whom the claimant had had a personal relationship. The employer provides long-term rehabilitation care for mentally retarded and other disabled persons. The employees were beginning to serve breakfast when the employer's witness, Toi Wilder, began to speak to another coworker, Mr. Kirk. The claimant believed that they were speaking about her and she jumped into the conversation addressing Ms. Wilder. A verbal confrontation or argument ensued and was initiated by the claimant. The argument then developed between the claimant and Mr. Kirk. Mr. Kirk arose and knocked the claimant's glasses off. Other coworkers separated the two. However the claimant kept arguing with Mr. Kirk. Ms. Wilder on two occasions asked the claimant to be quiet but the claimant refused and continued to argue with Mr. Kirk and be angry at him. Mr. Kirk got up and went over and grabbed the claimant and again the employees broke up the altercation. The claimant received her fourth warning as shown at Employer's Exhibit 1 and was discharged. This incident occurred in the presence of mentally retarded and disabled residents and coworkers. The claimant had previously received three warnings as shown at Employer's Exhibit 1 for attendance. Employer's policies at Employer's Exhibit 2 provide that for four offenses of any nature an employee can be discharged. The claimant had received training as shown at Employer's Exhibit 3 on how to deescalate or calm volatile situations but rather than deescalate the situation on March 17, 2004 with Mr. Kirk she escalated the situation.

Pursuant to her claim for unemployment insurance benefits filed effective March 21, 2004, the claimant has received unemployment insurance benefits in the amount of \$395.00 as follows: \$79.00 for five weeks from benefit week ending March 27, 2004 to benefit week ending May 1, 2004. For benefit week ending April 24, 2004, the claimant received no unemployment insurance benefits reporting earnings sufficient to nullify benefits for that week.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witnesses credibly testified that the claimant got into an altercation on March 17, 2004 with a coworker and a person with whom she had had a personal relationship. The evidence establishes that the claimant initiated the verbal confrontation with this coworker, Lamaurice Kirk. Even the claimant conceded that she "jumped in" because she thought that Mr. Kirk and another worker, Toi Wilder, CNA and one of the employer's witnesses, were talking about her. This conversation between Mr. Kirk and Ms. Wilder did not involve the claimant but the claimant jumped in and was addressing Ms. Wilder and an argument escalated becoming an argument between the claimant and Mr. Kirk. Mr. Kirk knocked the claimant's glasses off. At that time other workers separated the two. However, the claimant kept arguing with Mr. Kirk even after being told twice by Ms. Wilder to be quiet. The claimant refused and continued to argue and be angry and Mr. Kirk again went after the claimant and grabbed her. The staff again broke up this confrontation. The administrative law judge concludes that claimant's behavior in precipitating the argument or initiating the argument and then failing to be quiet and continuing the argument even after being instructed not to do so is a deliberate act constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evinces a willful or wanton disregard of the employer's interests and, at the very least, is carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. The administrative law judge specifically notes that the employer provides long-term rehabilitative care for mentally retarded and other disabled persons and the

claimant has had specific training as shown at Employer's Exhibit 3 in deescalating situations. This incident occurred in the presence of staff and disabled residents. The claimant should have known better than to continue to escalate an argument but she failed to do so. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct, and, as a consequence, the claimant is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

The administrative law judge further notes that this was the fourth warning received by the claimant as shown by Employer's Exhibit 1 and according to the employer's policies at Employer's Exhibit 2, after four warnings or four offenses an employee can be discharged. The administrative law judge does conclude that the employer has failed to demonstrate by a preponderance of the evidence that the claimant's absences and tardies were excessive unexcused absenteeism as defined by 871 IAC 34.32(7) but the administrative law judge concludes that the claimant's warnings for her attendance should have put her on notice to govern herself appropriately and the claimant's conduct on March 17, 2004 was not appropriate. The administrative law judge in no way condones the physical acts committed by Mr. Kirk but believes that the claimant is responsible for escalating the situation and continuing an argument and this is disqualifying misconduct.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$395.00 since separating from the employer herein on or about March 25, 2004 and filing for such benefits effective March 21, 2004, to which she is not entitled and for which she is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of April 9, 2004, reference 01, is reversed. The claimant, Teddreka H. Coleman, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits. She has been overpaid unemployment insurance benefits in the amount of \$395.00.

tjc/kjf