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

TYRONDA BROWN
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HCM INC
C/O TALX – UC EXPRESS
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Appeal Number: 04A-UI-01745-SWT
OC 12/14/03 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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 10, 2004, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 9, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Kym Houser participated in the hearing on behalf of the employer with a witness, Nancy Upmeyer.

FINDINGS OF FACT:

The claimant worked full time for the employer as a certified nursing assistant from August 6, 2002 to December 11, 2003. The claimant's supervisor was Nancy Upmeyer. The claimant was informed and understood that under the employer's work rules, leaving the facility without

notice to and permission from a supervisor was prohibited. She received a written warning after she took longer than her half hour lunch break on August 7, 2003, and failed to punch out on the time clock. She was suspended on November 18, 2003, after she took an hour and seven-minute lunch break on November 17 and left the facility without permission from a supervisor. She was informed that any further infractions would result in her termination.

On December 11, 2003, the claimant left the facility after she had punched in, without permission from her supervisor. She took longer than the allotted 15-minute break she was entitled to under the employer's policies. She was out in the parking lot with another employee, who was inspecting her car because she had some problems with it overheating on the way to work. Supervisors were trying to find the claimant but she could not be found because she had not notified a supervisor that she was leaving the facility.

The employer discharged the claimant on December 11, 2003, for repeated violation of the employer's work rules regarding breaks, leaving the facility without permission, and accurately recording her time worked.

The claimant filed a new claim for unemployment insurance benefits with an effective date of December 14, 2004. The claimant filed for and received a total of $3,672.00 in unemployment insurance benefits for the weeks between December 14, 2003 and March 6, 2003.

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.

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).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. She had been warned for similar conduct and informed that her job was in jeopardy. Work-connected misconduct as defined by the unemployment insurance law has been established 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 $3,672.00 in unemployment insurance benefits for the weeks between December 14, 2003 and March 6, 2003.

DECISION:

The unemployment insurance decision dated February 10, 2004, reference 02, 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 $3,672.00 in unemployment insurance benefits, which must be repaid.

saw/b