

**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**

**MONICA L HAUSERMAN
913 LONGVIEW ST
CEDAR FALLS IA 50613**

**CLINIC INVESTMENTS INC
309 E CHURCH ST
MARSHALLTOWN IA 50158**

**Appeal Number: 04A-UI-08521-CT
OC: 07/11/04 R: 03
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Monica Hauserman filed an appeal from a representative's decision dated August 3, 2004, reference 01, which denied benefits based on her separation from Clinic Investments, Inc. After due notice was issued, a hearing was held by telephone on August 30, 2004. Ms. Hauserman participated personally. The employer participated by Annette Hughlett, Human Resources Specialist. Exhibits One through Five were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Hauserman began working for Clinic Investments, Inc. on February 14, 2000. She was employed full time as a medical transcriptionist. She left the employment on April 7, 2004 because of a work-related injury to her wrists and hands. A worker's compensation claim was filed and Ms. Hauserman was placed on a leave of absence. On June 16, 2004, Dr. David Kirkle released her to return to full duty and closed her worker's compensation case. Dr. Kirkle noted that she should continue using non-steroids and splints, and to continue her home exercise program. He also suggested that she might want to consider interarticular joint injections. Finally, Dr. Kirkle noted that it would be up to Ms. Hauserman as to whether she felt capable of returning to her former job as a transcriptionist.

On June 14, 17, and 18, Ms. Hauserman left voice mail messages for Annette Hughlett concerning her status. In a conversation with the employer on June 22, Ms. Hauserman indicated that, although she had been released by Dr. Kirkle, she continued to experience pain and could not type longer than 15 to 20 minutes without experiencing pain. Ms. Hauserman was told that the employer needed something from her family doctor verifying the need to be absent following her release by Dr. Kirkle. She was told to call the employer on a daily basis. She was also told that her Family and Medical Leave Act (FMLA) time would expire on July 5, 2004. This information was reiterated in a letter to Ms. Hauserman dated June 23, 2004. Ms. Hauserman saw Dr. Vanderkooi on June 25 but did not contact the employer after the appointment. The employer attempted to reach her on June 28 and June 29, to no avail.

The employer did not hear further from Ms. Hauserman until July 1 when she again left a voice mail message. She indicated that she would be seeing a specialist regarding her condition. The next time the employer heard from her was on July 6 when she left a voice mail message inquiring about the possibility of a leave of absence until her medical condition was clarified. The employer made eight attempts to reach Ms. Hauserman by phone on July 7 but was unable to do so. When she failed to contact the employer on a daily basis, a letter was sent to Ms. Hauserman on July 13 advising that she no longer had employment. The letter stated that the employer had not received any contact from her since July 6. The letter also stated that the employer had not received any medical documentation of the need to be absent after the expiration of her FMLA. The letter also gave Ms. Hauserman an opportunity to submit additional medical information to be considered by the employer. The letter stated that the employer would need something from her doctor excusing her from work from July 8 forward and that such documentation had to be submitted by July 20. The certified letter of July 13 was signed for on July 15. Ms. Hauserman did not submit anything in response to the letter. On July 26, she contacted the employer to request that her 401(k) distribution be expedited.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Hauserman was separated from employment for any disqualifying reason. The employer initiated the separation when Ms. Hauserman was mailed a letter of termination on July 13, 2004. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Hauserman was not discharged because her medical condition prevented her from returning to work. She was discharged because she failed to maintain daily contact with the

employer as directed and failed to provide the medical documentation the employer requested. She knew from the June 22 conversation with the employer that a doctor's excuse was necessary to cover her absences after her FMLA ended. The employer's request was not unreasonable given the fact that Dr. Kinkle had released her to return to work. Ms. Hauserman may well have believed her doctor was going to fax something to the employer. However, she knew from the July 13 letter that the employer had not received anything from her doctor. In spite of this and in spite of being given another opportunity to submit something from her doctor by July 20, Ms. Hauserman did not present the employer with anything from her doctor.

Ms. Hauserman was also aware that the employer wanted her to check in on a daily basis regarding her status. This request was based on the fact that the employer was having difficulty reaching her by phone. This request was likewise not unreasonable. In spite of this request, there were a number of days prior to July 6 on which Ms. Hauserman failed to contact the employer. There was no contact between her voice mail message to the employer on July 6 and when the letter of termination was mailed on July 13.

The employer had the right to know whether Ms. Hauserman's extended absence after July 7 was, in fact, medically necessary. She did not submit any documentation from her doctor during the hearing to verify that her absences were necessary because of her medical condition. Under the circumstances of this case, Ms. Hauserman's failure to provide the employer with documentation of the continued need to be absent after she had been released by one doctor constituted a substantial disregard of the standards the employer had the right to expect.

Ms. Hauserman denied that she quit the employment or that she had formulated any intent to quit. Although she had been told that it was unlikely that she would be able to return to her job as a transcriptionist, she was still in the process of investigating what steps could be taken regarding her condition. Given this factor, the administrative law judge must presume that Ms. Hauserman intended to remain in the employment, at least until there was some definitive medical opinion regarding her work capacity. For the above reasons, the administrative law judge has not considered the voluntary quit provisions of the law.

DECISION:

The representative's decision dated August 3, 2004, reference 01, is hereby affirmed as to result. Ms. Hauserman was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/kjf