

**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**

**ROCHELLE MILLION
107 E NORTH ST
MARSHALLTOWN IA 50158**

**GRANDVIEW HEIGHTS INC
910 E OLIVE ST
MARSHALLTOWN IA 50158**

**Appeal Number: 06A-UI-00043-CT
OC: 11/27/05 R: 02
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 Overpayments

STATEMENT OF THE CASE:

Grandview Heights, Inc. filed an appeal from a representative's decision dated December 23, 2005, reference 03, which held that no disqualification would be imposed regarding Rochelle Million's separation from employment. After due notice was issued, a hearing was held by telephone on January 19, 2006. Ms. Million participated personally. The employer participated by Craig Koonce, Human Resources Manager; Tom Hoskins, Administrator; and Denise Adkins, Scheduler. Exhibits One through Eight were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Million was employed by Grandview Heights, Inc. from February 17 until November 29, 2005 as a full-time certified nursing assistant. She was discharged due to unsatisfactory attendance.

Ms. Million received warnings about her attendance on August 23 and September 20. Her absences to this point were due to either her own illness or that of a child. She was absent on October 10 because she thought it was Tuesday, her day off. She was late reporting to work on October 24 by nine minutes. She was counseled regarding attendance on October 27 and advised that any further absences without a doctor's excuse or any further tardiness would result in discharge. Ms. Million was late on October 28, 30, and 31. The tardiness ranged from one minute to three minutes. Employees are expected to be on the floor and prepared to work at the shift start time. Ms. Million was late on November 6, 8, 10, 15, 16, 19, 20, 21, and 22. The tardiness ranged from one minute to 17 minutes. She was late by five or more minutes on five of the nine occasions referred to above. On November 23, Ms. Million was given a written warning that advised she would be discharged if she was late again. The counseling of October 27 and the warning of November 23 both contain areas for the employee to write a response or to indicate agreement or disagreement with the employer's recitation of the facts. Ms. Million gave no indication on the warnings that she disagreed with the employer's statements regarding her tardiness.

The decision to discharge was due to Ms. Million's tardiness of November 29. She called the scheduler at 10:35 a.m. to see if she could have the day off. When she was told that she was needed and could not have the day off, she indicated she would be late. She indicated she would be in at 4:00 p.m. Her shift started at 2:00 p.m. As a result of this final incident of tardiness, Ms. Million was discharged on November 29, 2005.

Ms. Million has been paid a total of \$1,496.00 in job insurance benefits since filing her claim effective November 27, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Million was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Absences that are for reasonable cause and are properly reported are considered excused absences. Tardiness in reporting to work is considered a limited absence from work.

Ms. Million's tardiness is sufficient, standing alone, to constitute disqualifying misconduct. She was warned about her tardiness on October 27 and knew that continued tardiness might result in her discharge. In spite of the warning, she was late on another 12 occasions before being warned again. She contended that she could not clock in timely because of too many others needing to use the time clock at the same time. The administrative law judge did not find this contention credible. She was able to clock in timely, and even early, on some occasions. Moreover, she never notified the employer that the instances of tardiness reflected in her

records were due to time clock problems. The warning of November 23 again put Ms. Million on notice that her tardiness was a problem and was jeopardizing her continued employment. She was then two hours late on November 29. She was not given permission to be late. The scheduler only acknowledged that she said she would be late.

Ms. Million's failure to conform her attendance to the employer's expectations constituted a substantial disregard of the standards the employer had the right to expect. The tardiness identified herein is sufficient to establish excessive unexcused absenteeism within the meaning of the law. Accordingly, benefits are denied.

Ms. Million has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7). Of the \$1,496.00 received, an overpayment of \$234.00 has already been established on an unrelated matter.

DECISION:

The representative's decision dated December 23, 2005, reference 03, is hereby reversed. Ms. Million 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. Ms. Million has been overpaid \$1,262.00 in addition to the \$234.00 overpayment previously assessed by Workforce Development.

cfc/tjc