

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA K PLUM**  
Claimant

**APPEAL NO: 14A-UI-01844-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JENNIE EDMUNDSON**  
**MEMORIAL HOSPITAL**  
Employer

**OC: 01/26/14**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(2) – Discharge  
Iowa Code § 96.3(7) – Recovery of Overpayment of Benefits

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's February 14, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant has been discharged for nondisqualifying reasons. The claimant participated at the March 10 hearing. Donna Wellwood and Mary Colburn, the director of nursing, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUES:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

Is the claimant or is the employer responsible for paying back any overpayment?

**FINDINGS OF FACT:**

The claimant started working for the employer in July 2011. She worked as a full-time CNA. The employer's progressive policy requires the employer to give an employee a documented discussion, a written warning, a suspension and then termination when the employee has attendance issues. The employer also requires employees to contact the employer two hours before a scheduled shift when they are unable to work as scheduled.

During her employment, the employer gave the claimant a documented discussion on November 15, 2011, a written warning on December 29, 2011, and a suspension on December 29, 2011. In 2013, the employer talked to the claimant several times about her attendance. In 2013, the claimant was late for work seven times, she reported she was ill and unable to work seven times and had a surgical procedure that resulted in her being absent from February 25 through March 27.

On January 5, 2014, the claimant properly notified the employer she was unable to work because of problems with child care. On January 7, the claimant went home early because she did not feel well. On January 8, the claimant reported she was unable to work because she had to take her husband to the hospital.

On January 13, 2014, the employer gave the claimant a verbal warning. Colburn reminded the claimant that she needed to work as scheduled. While the employer could have discharged the claimant on January 13, the employer did not. On January 13, 2014, the claimant learned that if she had one more unscheduled absence, she would be discharged.

The employer's records indicate the claimant did not call or report to work on January 20. On January 21, Colburn talked to the claimant and told her that she did not want to discharge her so she had to be at work on time the next day. As the claimant was getting ready for work on January 22, she experienced a panic attack. She called the employer at 6:30 a.m. or 30 minutes before she was scheduled to work to report she was unable to work that day. The claimant was anxious because of personal family issues that she needed to address. When the claimant called in late on January 22, Colburn decided this was the last straw and discharged the claimant for excessive absenteeism.

The claimant established a claim for benefits during the week of January 26, 2014. She filed claims for the weeks ending February 1 through March 15. She received her maximum weekly benefit amount of \$273 for each week. The employer participated at the fact-finding interview.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant understood her job was in jeopardy when Colburn talked to her on January 13, 2014, and told her she would be discharged if she had one more unexcused absence. The employer did not want to discharge the claimant. When the claimant did not call or report to work on January 20, the employer again gave her another chance. On January 21, the employer warned the claimant to work as scheduled the next day. On January 22, the claimant was scheduled to work at 7 a.m. The claimant was anxious and wanted to resolve family issues. As she was getting ready for work, she experienced a panic attack. Instead of going to work late, the claimant called the employer at 6:30 or 30 minutes before her shift started to report she would not be at work that day. This was the employer's last straw. As a result of her continued attendance issues, the employer discharged the claimant on January 22, 2014. Based on the claimant's attendance history, the warnings the employer gave here on January 13 and 21, and her failure to properly notify the employer on January 20 that she would not be at work, the employer established the claimant was discharged for reasons amounting to work-connected misconduct. As of January 26, 2014, the claimant is not qualified to receive benefits.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award

benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)a, b.

Based on this decision, the claimant has been overpaid \$1911 in benefits she received for the weeks ending February 1 through March 15, 2014. Since the employer participated at the fact-finding interview, the claimant is responsible for paying back the overpayment of benefits.

**DECISION:**

The representative's February 14, 2014 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of January 26, 2014, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The claimant has been overpaid \$1911 in benefits she received for the weeks ending February 1 through March 15, 2014. Since the employer participated at the fact-finding interview, the claimant is responsible for paying back the overpayment.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs