

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALEA K CRAM**  
Claimant

**APPEAL NO. 10A-UI-02199-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SYNOVATE INC**  
Employer

**OC: 01/03/10**  
**Claimant: Respondent (2R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from a representative's decision dated February 1, 2010, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was conducted on March 29, 2010. The claimant participated personally. Participating on behalf of the employer was Alison Goldfarb, Hearing Representative. Appearing as a witness was Tine Hernandez, Quality Control Manager. Exhibit One was received into evidence.

**ISSUES:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits and whether the claimant has been overpaid job insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Alea Cram was employed as a part-time interviewer for Synovate Inc. from March 9, 2009 until September 19, 2009 when she was discharged from employment for failing to report or provide notification to the employer. Ms. Cram worked as an interviewer working approximately 25 hours per week and was paid by the hour.

The claimant was discharged after she violated the company policy by failing to report for scheduled work and providing no notice to the employer on September 19, 2009. The claimant was aware that under company policy employees are subject to discharge if they fail to report or provide notification on two occasions. The claimant had previously failed to report and had not provided notification and had been specifically warned by the employer.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits.

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.

The evidence in the record establishes that the claimant was discharged for repetitively failing to report or provide notification to the employer. Ms. Cram was aware that under company policy she was subject to discharge upon the second occurrence of failing to report or provide notification. The claimant was aware of the policy and had been specifically warned in the past when she had failed to report or provide notification of her impending absence.

The claimant's failure to report or provide notification to the employer showed a disregard of the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions under the Employment Security Act. Benefits are denied.

The claimant has received unemployment benefits to which she is not entitled.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

**DECISION:**

The representative's decision dated February 1, 2010, reference 02, is reversed. Alea Cram is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, providing that she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

css/css