

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

KARILYN K CHRISTENSON
2815 W 49TH ST
DAVENPORT IA 52806-3512

APAC CUSTOMER SERVICES OF IOWA
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-04451-DWT
OC: 04/02/06 R: 04
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:

APAC Customer Services of Iowa LLC (employer) appealed a representative's April 20, 2006 decision (reference 01) that concluded Karilyn K. Christenson (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 10, 2006. The claimant responded to the hearing notice, but was not available for the scheduled hearing. Tracy Taylor, a representative with TALX, appeared on the employer's behalf. Tara Pilkington and Turkessa Hill testified on the employer's behalf.

After the hearing had been closed and the employer had been excused, the claimant called the Appeals Section in response to the earlier message left for her. The claimant requested that the hearing be reopened. Based on the claimant's request to reopen the hearing, the evidence,

the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

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

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on August 8, 2005. The claimant worked as a full-time customer service representative.

The claimant had an attendance problem. On December 11, 2005, the employer gave the claimant a final written warning for her attendance. The employer warned the claimant that her job was in jeopardy. The employer also informed the claimant that she was required to maintain perfect attendance until March 11, 2005, for some attendance occurrences to drop off her record.

January 9, 2006, was the last day the claimant worked. From January 10 through 14, the claimant did not call or report to work as scheduled. On January 15, the claimant left a voice message that she had a doctor's note for her absences. Neither the claimant nor her doctor provided a copy of the doctor's note to the employer. The claimant did not call or report to work as scheduled from January 16 through 20. On January 21, 2006, the claimant called the employer and reported she was ill and unable to work as scheduled. On January 23, the claimant left a message for the employer indicating she was on a medical leave. The employer had not approved a medical leave for the claimant and the employer had not received any doctor's statement from the claimant's doctor. The employer attempted to contact the claimant by phone on January 23 and 24, 2006. The employer was unable to leave any message on the claimant's phone because the claimant's mailbox was full so the employer could not leave any message.

On January 24, 2006, the employer terminated the claimant's employment because she had not worked since January 9 and the employer had not received any documentation from the claimant's doctor verifying she was ill and unable to work.

The claimant established a claim for benefits during the week of April 2, 2006. The claimant filed claims for the weeks ending April 8 through 29, 2006. The claimant received her maximum weekly benefit amount of \$203.00 each of these weeks.

The claimant was not available for the scheduled May 10 hearing at the phone number she provided prior to the hearing. The claimant forgot about the hearing and was at a grocery store at the time of the scheduled hearing. By the time the claimant contacted the Appeals Section, the hearing had been closed and the employer had been excused. The claimant made a request to reopen the hearing.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c). The claimant forgot about the scheduled hearing and was not available at the time of the hearing. Even though the claimant intended to participate, forgetting about the hearing does not establish good cause for responding late or being unavailable at the time of the hearing. The claimant's request to reopen the hearing is denied.

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. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(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 knew or should have known her job was in jeopardy on December 11, 2005, when she received a final written warning for attendance issues. The claimant did not call or report to work January 10 through 14 and from January 16 through 20, 2006. When the claimant called on January 15, she indicated she had a doctor's excuse but the claimant did not provide the employer with a copy of the doctor's excuse either by mailing it or having her doctor fax it to the employer. Since the evidence does not establish that the claimant was absent because of an illness and she never provided the employer with a doctor's excuse, the facts establish the employer discharged the claimant for work-connected misconduct. As of April 2, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending April 8 through 29, 2006. The claimant has been overpaid \$812.00 in unemployment insurance benefits.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's April 20, 2006 decision (reference 01) is reversed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of

April 2, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending April 8 through April 29, 2006. The claimant has been overpaid and must repay a total of \$812.00 in benefits she received for these weeks.

dlw/kkf