

**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**

**LUCINDA A KOFOED
18466 SCHOOL HILL AVE
COUNCIL BLUFFS IA 51503**

**JENNIE EDMUNDSON MEMORIAL
HOSPITAL
ATTN HUMAN RESOURCES DEPT
933 E PIERCE ST
COUNCIL BLUFFS IA 51503**

**Appeal Number: 05A-UI-11237-HT
OC: 10/09/05 R: 01
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) – Overpayment

STATEMENT OF THE CASE:

The employer, Jennie Edmundson Memorial Hospital (Edmundson), filed an appeal from a decision dated October 24, 2005, reference 01. The decision allowed benefits to the claimant, Lucinda Kofoed. After due notice was issued a hearing was held by telephone conference call on November 16, 2005. The claimant provided a telephone number of (712) 232-1192. That number was dialed at 12:59 p.m. and the only response was a message machine. A message was left indicating the hearing would proceed without the claimant's participation unless she contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 1:14 p.m. the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the

hearing notice. The employer participated by Benefits Specialist Kathy Heuwinkel and Team Leader David Pahl.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Lucinda Kofoed was employed by Edmundson from October 4, 1995 until October 10, 2005. She was a full-time cleaning technician. During the course of her employment Ms. Kofoed attended in-service seminars where the employer's code of conduct was reviewed. One of the policies calls for disciplinary action up to and including discharge for any employee who makes threats against other employees.

In December 2004 the claimant was placed on probation for two years for "disrespecting" two supervisors. She was notified discharge would result for any further violations of the code of ethics. On October 5, 2005, Team Leader David Pahl received a letter signed by four of the claimant's co-workers regarding threats they had heard the claimant make against Charge Person Shirley Baucom. These threats were not made to Ms. Baucom but against her. Ms. Kofoed made comments in which she threatened to hit or "strangle" the charge person.

The claimant was interviewed by Mr. Pahl and Workforce Manager Christi Rogge on October 10, 2005, at which time she admitted to making the statements about Ms. Baucom but not to her. She was discharged for violating the company code of ethics and her probation.

Lucinda Kofoed has received unemployment benefits since filing a claim with an effective date of October 9, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had been advised her job was in jeopardy as a result of her inappropriate behavior toward co-workers and supervisors. In spite of the warning, Ms. Kofoed made statements which threatened physical harm to another supervisor. The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of October 24, 2005, reference 01, is reversed. Lucinda Kofoed is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$302.00.

bgh/kjw