

**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**

**LATRICE C TAYLOR  
2401 HYW 6 E APT 4216  
IOWA CITY IA 52240**

**SEATON CORPORATION  
D/B/A STAFF MANAGEMENT  
C/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-08313-RT  
OC: 07-04-04 R: 03  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting  
Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Seaton Corporation, doing business as Staff Management, filed a timely appeal from an unemployment insurance decision dated July 22, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Latrice C. Taylor. After due notice was issued, a telephone hearing was held on August 23, 2004, with the claimant participating. Rachel Dolezal, Senior Account Manager, and Carlos Rojasmeda, Third Shift Account Supervisor, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

#### 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: The claimant was employed by the employer as a full-time production worker from June 10, 2003 until she separated from her employment on March 25, 2004. The claimant's last day of work was March 16, 2004. The claimant was absent on March 17, 2004. She properly called the employer and explained that she had an interview in the morning and the employer excused this absence. Thereafter, the claimant was absent for four days of scheduled work in a row without notifying the employer, as follows: March 18, 21, 22, and 24, 2004. On March 18, 2004, the employer attempted to call the claimant at her telephone number but learned that the telephone number had been disconnected. The employer's policy provides that two consecutive absences without reporting to the employer or two consecutive absences as a no-call/no-show are considered a voluntary quit. Further, the employer's policy requires that an employee who is going to be absent or tardy must notify the employer two hours before the employee's start time. These rules are in writing. The claimant got a copy of these rules and signed an acknowledge therefore.

On March 15, 2004, the claimant was absent because she did not have transportation, but she properly reported this absence. On March 11, 2004, the claimant was absent and provided no reason and her notification to the employer was late. On March 1, 2004, the claimant was absent with no reason given and, again, her call to the employer was late. On February 3, 2004, the claimant was absent for personal illness, but her call again to the employer was late. On January 25, 2004, the claimant was absent because her child was sick and this was properly reported to the employer. On January 5, 2004, the claimant showed up for work and was told to return in one to two hours, but the claimant never returned and never called the employer. The claimant received a written warning for each of the absences as noted above, through March 15, 2004. Pursuant to her claim for unemployment insurance benefits filed effective July 4, 2004, the claimant has received unemployment insurance benefits in the amount of \$1,106.00 as follows: \$158.00 per week for seven weeks, from benefit week ending July 10, 2004 to benefit week ending August 21, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer

has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer.

871 IAC 24.25(4) provides:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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, (7) provide:

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).

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The first issue to be resolved is the character of the separation. The employer maintains that the claimant voluntarily quit when she was absent for four consecutive days without notifying the employer, as set out in the Findings of Fact. The claimant testified that she was discharged, but was unable to state who discharged her other than that she learned about the discharge when she went to get her check on March 28, 2004, and learned that she was not on the list to gain admittance to the employer's location. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant left her employment voluntarily. The employer's witness, Rachel Dolezal, Senior Account Manager, credibly testified that the claimant was absent as a no-call/no-show without informing the employer on March 18, 21, 22, and 24, 2004 and that these were consecutive scheduled days for the claimant to work. Ms. Dolezal also credibly testified that the employer has a policy that provides that two consecutive absences as a no-call/no-show is considered a voluntary quit. Here, the claimant had four consecutive absences as a no-call/no-show. The claimant's testimony to the contrary is not credible. The claimant's response to most of the questions posed by the administrative law judge concerning her attendance was that she did not remember. Surely the claimant would have remembered some of the absences, but the claimant testified that she did not. It is telling that the claimant did not know that she did not have a job until she showed up on March 28, 2004 and was not on the list to gain admittance. It appears to the administrative law judge that the claimant was never really discharged, but she just quit coming to work. Failing to come to work and not notifying the employer both demonstrates an intention to terminate the employment relationship and is an overt act to carry out that intention, as required for a voluntary quit by Local Lodge 1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily. The issue then becomes whether the claimant left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant provided no reason attributable to the employer for her quit. There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental, or that she was subjected to a substantial change in her contract of hire. Rather, it appears to the administrative law judge that the claimant simply quit coming to work and did not notify the employer and this is not good cause attributable to the employer. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits

Even should the claimant's separation be considered a discharge, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism. The claimant's absences are set out in the Findings of Fact. In addition to the four absences as a no-call/no-show, the claimant was also absent on March 15, 2004 for no transportation and was also absent on March 1 and 11, 2004, without giving a reason, and both of those absences were not properly reported because the claimant called in late. Even the claimant conceded that she was aware of the employer's policy that an employee must notify the employer two hours before the start of work if that employee is going

to be absent. The claimant did not do so for the last two absences in March 2004. The claimant was also on February 3, 2004, for personal illness but again, she failed to report that absence. The claimant was absent for a sick child on January 25, 2004, and this was properly reported. Finally, on January 5, 2004, the claimant came to work and was told to return in one to two hours and never returned and never notified the employer. The claimant received written warnings for each of the absences, as set out above. The administrative law judge concludes that except for the absence on January 25, 2004, all of the claimant's absences were either not for reasonable cause or personal illness or not properly reported and are, therefore, excessive unexcused absenteeism and disqualifying misconduct. Accordingly, even should the claimant's separation be considered a discharge, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism, and would still be disqualified to receive unemployment insurance benefits.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,106.00 since separating from the employer herein on or about March 25, 2004 and filing for such benefits effective July 4, 2004, to which she is not entitled and for which she is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions Iowa law.

#### DECISION:

The representative's decision dated July 22, 2004, reference 01, is reversed. The claimant, Latrice C. Taylor, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer. She has been overpaid unemployment insurance benefits in the amount of \$1,106.00.

b/b