

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA L BOLIN
Claimant

APPEAL NO. 12A-UI-02096-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

QUALITY CHOICES INC
Employer

OC: 01/22/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated February 28, 2012, reference 01, that held the claimant was not discharged for misconduct on January 19, 2012 and which allowed benefits. A hearing was held on March 19, 2012. The claimant did not participate. Tanya Shannon, program coordinator, and Patty Clark and Alicia Peterman, case managers, participated for the employer.

ISSUES:

Whether the claimant was discharged for misconduct.

Whether claimant is overpaid unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds that: The claimant worked as a part-time life skills educator from April 10, 2011 to January 19, 2012. The claimant received the employer's attendance policy. It requires an employee to give two hours' of an intended absence.

Claimant was scheduled to report for a consumer assignment at 9:00 a.m. on January 16, 2012. The employer called and left claimant a message at 8:10 to remind her. The consumer notified the employer claimant had not arrived by 9:15. Claimant called the employer at 9:45 that she had car trouble.

The employer issued claimant a final warning on January 16 for failing to timely report her absence from work, because missing a consumer assignment is a safety issue for the employer.

Claimant was a no-call, no-show for a consumer assignment scheduled at 2:30 p.m. on January 19. When the employer confronted her, she stated she had car trouble. The employer discharged claimant for violation of the employer attendance policy.

Claimant failed to respond to the hearing notice. She has received unemployment benefits on her current claim.

REASONING AND CONCLUSIONS OF LAW:

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(7) provides:

(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 administrative law judge concludes the employer established claimant was discharged for misconduct on January 19, 2012, for excessive "unexcused" absenteeism.

The claimant missed work for a non-excusable reason on January 16 and failed to timely report the absence to the employer. The incident is more serious than just coming to work, as she was to report for a customer appointment, which is a safety concern for the employer. The employer let claimant know the seriousness of the offense by issuing a final written warning.

The no-call, no-show for the same type of customer assignment only three days later shows a total disregard of the employer's interest and that of the person she was scheduled to serve. This incident constitutes job-disqualifying misconduct in light of the recent, final warning.

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.

Since claimant is disqualified by this decision after receiving benefits, the overpayment issue is remanded to Claims for a decision.

DECISION:

The representative's decision dated February 28, 2012, reference 01, is reversed. The claimant was discharged for misconduct in connection with employment on January 19, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw