

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

STEPHANIE S EUBANKS
873 NE BROADWAY AVE
DES MOINES IA 50313-2434

PEOPLE 2.0 GLOBAL INC
780 E MARKET ST #120
WEST CHESTER PA 19382

Appeal Number: 06A-UI-02386-SWT
OC: 01/15/06 R: 02
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:

The employer appealed an unemployment insurance decision dated February 16, 2006, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 16, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Carmen Manning participated in the hearing on behalf of the employer with a witness, Kelly Devlin.

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer from April 20, 2005, to January 3, 2006. The claimant was informed and understood that under the employer's work rules, employees

were required to notify the employer before the start of their shift if they were not able to work as scheduled. Her final assignment was working as an office assistant at Armstrong Cabinet.

On January 4 and 5, 2006, the claimant was unable to work due to problems with her back. She called and notified the employer that she would not be at work due to back pain. The claimant was absent from work without notice on January 9, 10, and 11. After she was absent without notice on these days, the employer's staffing coordinator, Kelly Devlin, contacted the claimant in the afternoon on January 11. The claimant told Devlin she would be working from 8:00 a.m. to noon on January 12. Devlin told her that she would have to sign a letter advising her that she was required to notify the employer if she was going to miss work.

The claimant was absent without notice to the employer on January 12. Devlin called her after the start of her shift to make sure that she was at work. The claimant told Devlin she had a migraine and would not be at work and also had to go to court that day. Devlin told her to call after she was finished with court. The claimant did not call back.

The claimant was absent from work on January 13 without notice to the employer. Later that day, Devlin called the claimant and told her that she was discharged from her assignment and from employment with the employer due to her excessive unexcused absenteeism.

The claimant filed for and received a total of \$2,079.00 in unemployment insurance benefits for the weeks between January 15 and March 18, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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(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).

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 Findings of Fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The employer's evidence regarding the claimant's attendance and absences without proper notice to the employer was more credible than the claimant's testimony. The claimant admitted to not calling in once but said she otherwise called in. Devlin testified in a very credible fashion that the claimant only called in on January 4 and 5.

Although the claimant may have had legitimate reasons for missing work, she did not have valid reasons for failing to properly notify the employer about her absences. This conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue in this case is whether the claimant was overpaid 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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$2,079.00 in benefits.

DECISION:

The unemployment insurance decision dated February 16, 2006, reference 02, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$2,079.00 in unemployment insurance benefits, which must be repaid.

saw/kkf