

**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**

**JASON R HECKERT  
214 W LINE DR  
HAZLETON IA 50641**

**TAYLORED BENEFITS INC  
3619 – 109<sup>TH</sup> ST  
URBANDALE IA 50322**

**Appeal Number: 05A-UI-12146-RT  
OC: 01-09-05 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, 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, Taylored Benefits, Inc., filed a timely appeal from an unemployment insurance decision dated November 21, 2005, reference 04, allowing unemployment insurance benefits to the claimant, Jason R. Heckert. After due notice was issued, a telephone hearing was held on December 15, 2005, with the claimant participating. Layne Taylor, Owner, and Truddy Tucker, Office Manager, participated in the hearing for the employer. Employer's Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department of 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, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a full time telemarketer from July 29, 2005 until he separated from his employment on November 7, 2005. November 2, 2004, was the claimant's last day of work. On November 3 and 4, 2004, the claimant was absent. The claimant called the employer's witness, Layne Taylor, Owner, on November 3, 2005 and informed him that he had been up all night baby-sitting for his sister's children. Mr. Taylor admonished the claimant for his attendance and told the claimant to come in the next day. Mr. Taylor did not tell the claimant that he was fired or discharged. The claimant was then absent the next day, November 4, 2005. The claimant came in on November 7, 2005 to meet with Mr. Taylor but Mr. Taylor was not there. The claimant called Mr. Taylor. The claimant asked Mr. Taylor if he should file for unemployment insurance benefits. Mr. Taylor told the claimant that he wanted to meet with the claimant but that the claimant would have to do what he thought he should do. Mr. Taylor did not tell the claimant that he was fired or discharged. The claimant never returned to work.

The employer has no particular policy concerning the notice it expects from an employee who is going to be absent or tardy. The claimant did have other absences and tardies. However, during the week of October 18, 2005, Mr. Taylor told the claimant specifically to call him before the claimant's shift started if he was going to be absent or tardy. The claimant did not call before his shift was to start on November 3 and 4, 2005. The claimant had one and a half days of absences the week of October 18, 2005 because his aunt died but he did not notify the employer. The employer's witness, Truddy Tucker, Office Manager, had to call the claimant to find out why he was gone. The claimant also was absent two days that week for personal illness but he properly reported those absences. The claimant had other absences or tardies but the employer had no specific record of those. On October 24, 2005, and again on November 2, 2005, the claimant was given letters of warning as shown at Employer's Exhibit One. The claimant also received three or four oral warnings concerning his attendance. Pursuant to his claim for unemployment insurance benefits filed effective January 9, 2005 and reopened effective November 6, 2005, the claimant has received unemployment insurance benefits in the amount of \$1,518.00 since separating from the employer on or about November 7, 2005 and reopening his claim for benefits effective November 6, 2005 as follows: \$253.00 per week for six weeks from benefit week ending November 12, 2005 to benefit week ending December 17, 2005.

#### 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. He 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(21), (28) 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:

(21) The claimant left because of dissatisfaction with the work environment.

(28) The claimant left after being reprimanded.

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 first issue to be resolved is the character of the separation. The employer maintains that the claimant voluntarily left his employment on November 2, 2005 when that was his last day of work and he never returned to work thereafter. The claimant maintains that he was discharged on November 7, 2005 when he was so informed by the employer's witness, Layne Taylor, Owner. Although it is a close question, the administrative law judge concludes that the claimant left his employment voluntarily effective November 7, 2005. All the witnesses seem to agree that the claimant was absent on November 3 and 4, 2005 because he either had to baby-sit for his sister's child or was up all night so baby-sitting and could not make it to work. On November 3, 2005, the claimant called the employer's other witness, Truddy Tucker, Office Manager, after the claimant's shift was to begin and also spoke to Mr. Taylor. The claimant was admonished for his absence but was not told that he was fired or discharged. The claimant was told to come in the next day. He was absent the next day and did not come in until November 7, 2005. When the claimant came in on that day Mr. Taylor was not there so the claimant called him and the claimant asked Mr. Taylor if he should file for unemployment insurance benefits. Mr. Taylor told the claimant that he wanted to meet with him personally but that he would have to do what he thought he had to do. Mr. Taylor did not tell the claimant that he was fired or discharged but only that he wanted to meet with him. The claimant then never returned to work. The claimant's testimony to the contrary is not credible. The claimant's testimony was inconsistent and equivocal. Mr. Taylor's testimony was forthright and supported by the testimony of Ms. Tucker. Accordingly, the administrative law judge concludes that the claimant effectively left his employment voluntarily on November 7, 2005. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his 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 his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The only apparent reasons for the claimant's failure to return to work were the reprimands for his attendance but leaving work voluntarily because of a reprimand is not good cause attributable to the employer. There was some evidence that the claimant was dissatisfied with his work environment but again this is not good cause attributable to the employer. The claimant may have had some kind of personality conflict with his supervisor but this also is not good cause attributable to the employer. See 871 IAC 24.25 (22). There is not a preponderance of the evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he 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 and he would still be disqualified to receive unemployment insurance benefits. The evidence establishes that during the week of October 18, 2005, the claimant was specifically told by Mr. Taylor that the claimant would have to call Mr. Taylor specifically before the claimant's shift was to start if the claimant was going to be absent or tardy. The claimant did not do so for his absences on November 3 and 4, 2005, when he was absent because he had been up all night baby-sitting for his sister's child. The administrative law judge concludes that missing work because one is baby-sitting for the child of his sister is not for reasonable cause or personal illness. Further, these absences were not properly reported because the claimant did not notify the employer by the start of his shift. There is also evidence that the claimant was absent for a day and a half during the week of October 18, 2005 because his aunt died but that he did not notify the employer and Ms. Tucker had to call the claimant. Although these absences were for reasonable cause, they were not properly reported. The claimant also was absent two days that week with the flu but these were properly reported. There was also evidence of prior absences or tardies for baby-sitting and the claimant had received, in addition to the warning on November 3, 2005 and October 18, 2005, two letters of warning about his attendance on October 24, 2005 and November 2, 2005, as shown at Employer's Exhibit One. There is also testimony that the claimant had received three or four prior oral warnings. Because of all the oral warnings and the absences and tardies not for reasonable cause or properly reported, the administrative law judge would conclude that these absences and tardies were excessive unexcused absenteeism. Therefore, even if the claimant's separation should be considered a discharge, the administrative law judge would conclude that he was discharged for disqualifying misconduct namely, excessive unexcused absenteeism, and he 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 \$1,518.00 since separating from the employer herein on or about November 7, 2005 and reopening his claim for benefits effective November 6, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of November 21, 2005, reference 04, is reversed. The claimant, Jason R. Heckert, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause

attributable to the employer. He has been overpaid unemployment insurance benefits in the amount of \$1,518.00.

kkf/kjw