

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE A GRAHAM
Claimant

APPEAL NO. 07A-UI-10377-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE FAMILY CREDIT UNION
Employer

**OC: 10/14/07 R: 04
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The Family Credit Union (employer) appealed a representative's November 7, 2007 decision (reference 01) that concluded Julie Graham (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 28, 2007. The claimant participated personally. The employer participated by Kristine McNeal, Human Resources, and Kelli Corbin, Branch Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on June 19, 2006, as a full-time member service representative working Monday through Saturday. The claimant had access to the employer's handbook on the computer. She signed for receipt of amendments to the handbook on August 23, 2006. The claimant understood she had 51 hours of paid time off each calendar year. If she were to be absent more than 51 hours, she could use 24 hours of unpaid leave. The handbook gave three days of bereavement leave for immediate family members.

The claimant had problems appearing for work on time. She received two warnings for 14 incidents of tardiness. On June 8, 2007, the employer issued the claimant a written warning for being tardy five days in the previous month. The employer notified the claimant that further infractions could result in termination from employment. The employer issued the claimant warnings for absence due to injury in a car accident, cellular telephone usage on the job, rudeness, and performance issues.

The claimant used all of her paid time off for the 2007 calendar year by April 2007. She took a week-long cruise and was absent due to illness for 11 hours. The claimant was injured in an

automobile accident on the way to work. The employer issued the claimant a written warning on April 8, 2007, indicating she was using 8 of her 24 hours available.

The claimant telephoned the employer on October 15, 2007, and stated she would not be at work because her grandmother had died. The employer warned the claimant that grandparents were not included in bereavement leave. The claimant said she was taking October 15, 2007, to plan the funeral. The claimant notified the employer on October 16, 2007, that she was taking the day off for the visitation. On October 17, 2007, the claimant told the employer she was taking the day off for the funeral. On October 18, 2007, the claimant left the employer a voice message indicating she would not be at work on October 18, 19, 20, and 21, 2007. The employer telephoned the claimant on October 19, 2007, and terminated the claimant for absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling

Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant knew how much time she was allotted in one year. She knew how much time she was allotted in bereavement leave. She could have taken two days for her grandmother's funeral and followed instruction. Instead, she planned to take six days. There was no testimony offered that the claimant tried to negotiate extra days from the employer. The claimant just thought she would take them. The claimant's disregard of the employer's interests is misconduct. As such, the claimant is not eligible 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 claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's November 7, 2007 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,771.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw