

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

ORAL W WHITE III  
2546 AVE F  
COUNCIL BLUFFS IA 51501

ALEGENT HEALTH  
c/o JOHNSON AND ASSOCIATES  
PO BOX 6007  
OMAHA NE 68106-6007

Appeal Number: 05A-UI-04514-HT  
OC: 02/13/05 R: 01  
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 96.5-2-a – Discharge  
Section 95.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Alegent Health, filed an appeal from a decision dated March 14, 2005, reference 01. The decision allowed benefits to the claimant, Oral White. After due notice was issued, a hearing was held by telephone conference call on May 18, 2005. The claimant participated on his own behalf. The employer participated by Human Resources Consultant Claudia Peterson, Operations Director Loretta Reed, Evening Shift Coordinator Peggy Leonard and Evening Shift Coordinator Jeff Showers. The employer was represented by Johnson and Associates in the person of Dawn Fox. Exhibit One was admitted into the record.

#### 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: Oral White was employed by Alegent Health from March 2, 1998 until February 16, 2005. He was a full-time housekeeper whose shift began at 4:00 p.m. His assignments changed daily and it was required that he report in to the shift supervisor to collect his beeper and check the daily assignment book.

On February 15, 2005, Operations Director Loretta Reed had a special assignment for Mr. White and another employer, Mr. Herman. They were to clean the emergency room floor prior to a scheduled inspection. Mr. Herman reported to work around 2:00 p.m. and Ms. Reed took him immediately to collect supplies for the job and then she gave him the special instructions. She waited in the office until 4:00 p.m. but the claimant never reported. She left the instructions with Peggy Leonard, the evening shift coordinator.

The next day Ms. Reed discovered the claimant had clocked in around 2:45 p.m. and she was concerned because he had never shown up in the office for the assignment by the time she left at 4:00 p.m. She questioned Ms. Leonard as to when he had appeared and also the day shift coordinator Jeff Showers. No one had seen him until after 4:00 p.m. Ms. Reed questioned the claimant and he submitted a written statement in which he admitted he would use the back entrance and clock in using the phone on the back dock, and then would drink pop until the day shift people left in order to avoid the crowd at shift change. The claimant was discharged for time card falsification.

Oral White has received unemployment benefits since filing a claim with an effective date of February 13, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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).

The claimant admitted that he arrived at work over one hour early and went on the time clock without actually reporting for his duties. He would engage in personal activities such as sitting in the cafeteria drinking pop before checking for his assignments. None of the supervisors gave him permission to come to work early, and even if they had, the fact he was not working after reporting prior to his shift is still unacceptable. He was being paid to work, not take a 90-minute break.

Although he did have some regular duties, the employer required him to report to the office to collect his beeper and check for any new or different assignments, as was the case on February 15, 2005. The other employee did report to work early but he also went to work immediately, and did not take an extended break.

The claimant was asking to be paid for nearly an hour during which he did not work and for taking an unauthorized break. An employer has the right to expect employees to work while they are on the clock and failure to do so is a violation of the claimant's duties and responsibilities. This is conduct not in the best interests of the employer and the claimant is disqualified.

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 unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of March 14, 2005, reference 01, is reversed. Oral White is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$1,206.00.

bgh/sc