

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRACI L COLLIER**  
Claimant

**APPEAL NO: 11A-UI-12118-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEVELOPMENTAL SERVICES OF IOWA**  
Employer

**OC: 04/24/11  
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated September 9, 2011. reference 02. that held the claimant was not discharged for misconduct on July 18, 2011, and benefits are allowed. A telephone hearing was held on October 10, 2011. The claimant did not participate. Jennifer Bogacs, HR Manager, participated for the employer. Official notice was taken of the Employer Appeal documents as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment on May 12, 2011, and last worked for the employer as a full-time direct support professional on August 16. She received written warnings for violation of the employer policies on June 1, 2, 27, and July 12, 2011. She was warned about leaving prior to the end of her scheduled work shift by arranging for another employee to come in a cover for her (May 22, 30 and 31).

On August 16, the claimant left work early by having another employee cover for her from 2:07 p.m. to her scheduled leaving time of 3:00 p.m. She was discharged on August 17 for repeated violation of employer polices.

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(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 administrative law judge concludes the employer has established claimant was discharged for misconduct in connection with employment on August 16, 2011 for repeated employer policy violations after warnings.

The employer issued written warnings to claimant to let her know it was not acceptable for her to leave work early and have another employee cover for her to the end of the scheduled shift. The claimant had received several warnings that show an intentional disregard of employer policy and coupled with the recent incident of leaving work early, job disqualifying misconduct.

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 has been disqualified by reason of this decision, the overpayment issued is remanded to Claims for a decision.

**DECISION:**

The department decision dated September 9, 2011, reference 02, is reversed. The claimant was discharged for misconduct on August 17, 2011. 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 the claimant is otherwise eligible. The overpayment issue is remanded to Claims.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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