

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DOREEN S VAN KAMPEN**  
Claimant

**APPEAL NO: 08A-UI-04862-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SSW ENTERPRISES INC  
COLLIS INC**  
Employer

**OC: 04/20/08 R: 04  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

SSW Enterprises, Inc. / Collis, Inc. (employer) appealed a representative's May 12, 2008 decision (reference 01) that concluded Doreen S. Van Kampen (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 4, 2008. The claimant participated in the hearing. Michelle Anderson appeared on the employer's behalf and presented testimony from one other witness, Amanda Ratcliff. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on August 13, 2003. She worked full time as a powder coat line operator in the employer's steel product manufacturing company. Her regular work schedule was 7:00 a.m. to 3:00 p.m. Monday through Friday. Her last day of work was April 1, 2008. The employer discharged her on April 15, 2008. The reason asserted for the discharge was excessive absenteeism.

Prior to April 2 the claimant had incurred the following points under the employer's 12-point attendance policy:

Date	Occurrence/reason if any	Points Assessed
08/04/07	No-call, no-show.	3.0 points.
08/19/07	Absent, called, personal.	1.0 point (4.0 cum.)
08/22/07	Absent, sick, also 08/23/07.	1.0 point (5.0 cum.)
08/28/07	Absent, called, personal.	1.0 point (6.0 cum.)
09/17/07	No-call, no-show.	3.0 points (9.0 cum.)
10/26/07	Medical leave through 02/11/08.	1.0 points (10.0 cum.)

The claimant had at least one prior incident that was removed from the claimant's record by April 1; the September 17, 2007 incident had brought the claimant to ten points, resulting in the employer issuing her a written warning and suspension.

On April 2 and April 3 the claimant called the employer's attendance message system and left messages identifying herself and indicating that she would not be in, but not giving any reason. She did not attempt to call her supervisor, Ms. Ratcliff, directly, even though she had Ms. Ratcliff's personal number and had called it in the past. Not until after the end of her scheduled shift on April 3 did she call and leave a message for Ms. Anderson, the human resources coordinator, in which she indicated she had been absent because of being sick and made a request to have the two days charged as vacation.

On April 4 and April 7 the claimant again called only the attendance voice mailbox and only indicated that she would not be in without providing a reason why. Later on April 7 Ms. Anderson called the claimant back and left a message that she could not grant vacation for the days missed as the claimant had not made a proper request to have the days treated as vacation and under the union contract only one day could be granted on a call-in basis.

On April 8 the claimant called in to the attendance voice mailbox and indicated she would be absent because she was sick and under doctor's care. During the day Ms. Anderson attempted to reach the claimant and left a message asking the claimant to call; she also indicated a back-dated doctor's note would not be acceptable. Ms. Anderson then sent the claimant a letter that day, received by the claimant on April 10, to the effect that the claimant needed to establish she in fact had been under doctor's care since April 2 in order to avoid termination. At 8:39 p.m. on the evening of April 8 the claimant called and left a message for Ms. Anderson in which she stated that she had been seen by her doctor on April 2 and had been under doctor's care since then. In fact, the claimant had not been seen by her doctor on April 2, although she may have gone to her doctor on or about April 8.

The claimant was a no-call, no-show beginning April 9 because she believed she was already going to be fired. On April 15 the employer sent the claimant a letter of termination.

The claimant established a claim for unemployment insurance benefits effective April 20, 2008. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,750.00.

## REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Excessive absences are not considered misconduct unless unexcused. 871 IAC 24.32(7). Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional. Cosper, supra. However, the asserted illness-related absence in this matter was not properly reported, nor was an acceptable reason provided to excuse the failure to properly report the absence. The validity of the claimant's contention that her absence was due to illness since April 2 is further called into question by the claimant's untruthful declaration that she had been seen by her doctor on April 2 and had been under the doctor's care since then. The claimant's final absence was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that future absences could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

Iowa Code § 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's May 12, 2008 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of April 20, 2008. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is overpaid benefits in the amount of \$1,750.00.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs