

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMY E TERVEER**  
Claimant

**APPEAL NO. 11A-UI-13189-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EMPLOYMENT CONNECTIONS INC**  
Employer

**OC: 09/11/11  
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Employment Connections, filed an appeal from a decision dated October 4, 2011, reference 01. The decision allowed benefits to the claimant, Amy Terveer. After due notice was issued a hearing was held by telephone conference call on November 2, 2011.

The claimant provided a telephone number to the Appeals Section. That number was dialed at 9:00 a.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the claimant's participation unless she contacted the Appeals Section prior to the close of the record. By the time the record was closed at 9:16 a.m. the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The employer participated by Staffing Professional Jeff Merryman. Exhibit One was admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Amy Terveer was employed by Employment Connections from December 6, 2010 until September 16, 2011 as a medical records clerk at Avera. On July 26, 2011, Staffing Professional Jeff Merryman issued her a written warning regarding complaints about her conduct and attitude from the client company.

The warning said her conduct with co-workers needed to change and improve immediately. There were documented incidents of conflict with co-workers and she had previously been spoken to by Avera Supervisor Luann Essing about these problems. The warning further notified her that her job was in jeopardy if there were any further incidents

On September 13, 2011, the employer received further complaints about Ms. Terveer's conduct. Other staff members were looking for a file which was needed urgently. The claimant knew where it was and knew others were looking for it but did not tell them where it was. She had also made an inappropriate comment about a co-worker who had gone to donate blood, suggesting the person was actually going to the mental health unit. Another co-worker was preparing to leave early for a doctor's appointment and heard Ms. Terveer say she was not going to finish that person's work even though it was her responsibility to do so.

The claimant's attitude and conduct had adversely affected the morale of the entire staff. She was described as "belligerent and rude." Ms. Epping had verified the complaints and requested the claimant be removed. Mr. Merryman notified the claimant in person that not only was her assignment ended but also her employment with Employment Connections on September 16, 2011.

Amy Terveer has received unemployment benefits since filing a claim with an effective date of September 11, 2011.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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 claimant had been advised her job was in jeopardy as a result of her poor attitude and work ethic. In spite of the warning she continued to antagonize co-workers, failed to do her assigned job duties or cooperate with other staff in the performance of the duties required of all staff in the medical records department. This adversely affected the employer's relationship with its client, jeopardizing future business with them. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code § 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.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of October 4, 2011, reference 01, is reversed. Amy Terveer is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs