

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIA J COLEMAN**  
Claimant

**APPEAL NO. 10A-UI-13919-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**Original Claim: 07/18/10  
Claimant: Appellant (1-R)**

Section 96.4-3 – Able and Available for Work  
Section 96.5-2-a – Discharge  
Section 96.3-7 – Overpayment  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Tia Coleman filed an appeal from a representative's decision dated September 7, 2010, reference 02, which denied benefits effective July 18, 2010, finding the claimant not able to work because of pregnancy. After due notice was issued, a telephone hearing was held on November 15, 2010. The claimant participated personally. The employer participated by Ms. Susan Schneider, attorney at law, and witnesses Mr. Steve Dowd and Ms. Ginny Sparrow.

**ISSUES:**

The issues are whether the claimant's appeal was timely, whether the claimant is able and available for work, and whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Tia Coleman was employed by Care Initiatives from November 2009 until July 18, 2010, her last day of work. Ms. Coleman discontinued reporting for scheduled work after that date and was subsequently discharged on July 26, 2010, for failure to report for work or to provide notification to the employer for her work shifts on July 20, and July 22, 2010. Ms. Coleman was employed as a full-time certified nursing assistant. The claimant was paid by the hour. Her immediate supervisor was Ginny Sparrow.

Ms. Coleman was discharged after she had failed to report for work and had not notified the employer in advance of her inability to report as required by company policy. Ms. Coleman was aware failure to report or to provide notification on two occasions would result in termination from employment under established company policy.

After being discharged from employment based upon her failure to report or to provide notification, Ms. Coleman presented a doctor's note stating that she was not able to work effective July 18, 2010, due to pregnancy. The employer had accommodated previous work restrictions that had been imposed because of Ms. Coleman's pregnancy. However, at the time that the claimant presented her most recent doctor's note to the employer, the claimant had already been discharged from

employment based upon her failure to report or to provide advance notification for her impending absences as required.

Ms. Coleman's appeal in this matter was due to be received by the Agency on or before September 17, 2010. The claimant's appeal was received on October 8, 2010, beyond the ten-day statutory time limit. Ms. Coleman testified that her appeal was delayed because she had been specifically told by a workforce representative that she would "need a doctor's release to appeal."

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

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The evidence in the record establishes that Ms. Coleman's delay may have been caused in part by inaccurate or incomplete information provided by Agency error. Good cause for filing beyond the statutory limit has been established.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The evidence in the record establishes that Ms. Coleman was medically unable to work effective July 18, 2010, due to medical reasons associated with her pregnancy. An individual must be able and available for work each week that he or she claims unemployment insurance benefits in order to be eligible to receive unemployment insurance benefits. Ms. Coleman was not able and available for work effective July 18, 2010.

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 evidence in the record establishes that Ms. Coleman was discharged from employment on or about July 26, 2010, after she had failed to report for work or to provide any notification to the employer of her impending absences for two or more consecutive work shifts in violation of established company policy. The claimant's failure to follow the required procedure of providing notification to her employer prior to being absent showed a disregard for the employer's interests and standards of behavior that the employer had a right to expect under the provisions of the Iowa Employment Security Law. The claimant's discharge therefore took place under disqualifying conditions. Ms. Coleman knew or should have known that failing to provide notice and failing to report for work for two or more work shifts would cause her discharge from employment. Benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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.

The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

**DECISION:**

The representative's decision dated September 7, 2010, reference 02, is affirmed as modified. Benefits are denied effective July 18, 2010, because the claimant was not able to work and therefore ineligible to receive unemployment insurance benefits. The claimant is disqualified based upon her disqualifying separation from employment. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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