

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA G ESPINOSA
Claimant

APPEAL NO. 06A-UI-11728-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**INNOVATIVE INJECTION
TECHNOLOGIES INC**
Employer

**OC: 03/05/06 R: 02
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Innovative Injection Technologies, Inc. (IIT), filed an appeal from a decision dated November 28, 2006, reference 05. The decision allowed benefits to the claimant, Maria Espinosa. After due notice was issued, a hearing was held by telephone conference call on December 21, 2006. The claimant participated on her own behalf and Susan Jaquez acted as interpreter. The employer participated by Human Resources Manager Lisa Buzzard.

ISSUE:

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

FINDINGS OF FACT:

Maria Espinosa was employed by IIT from June 13 until October 23, 2006. She was a full-time machine operator working Sunday through Wednesday with a start time of 7:00 a.m. The company policy requires any employee who is going to be absent without prior approval to call in at least one hour before the start of the shift so a replacement can be found.

Ms. Espinosa received written and verbal warnings for failing to call in one hour before the start of her shift. Human Resources Manager Lisa Buzzard received one call from her late in the morning and explained to her that she must call at least one hour before the start of her shift and speak only with her supervisor, Dennis O'Neil. She was given the main plant number, Mr. O'Neil's cell phone number, and his e-mail address.

On October 22, 2006, the claimant did not come to work and did not report her absence to her supervisor at least one hour before the start of the shift. As a result, her machine had to be shut down because there was no one there to operate it, and the production was negatively impacted. She was discharged on October 23, 2006, for continuing violation of the reporting policy.

Maria Espinosa has received unemployment benefits since filing an additional claim with an effective date of November 5, 2006.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant was absent from work on several occasions. The absences were due to illness but were not properly reported. A properly reported illness cannot be considered misconduct, as it is not volitional. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). If it is not properly reported, it is unexcused. The claimant had been advised her job was in jeopardy as a result of her failure to call in her absences at least one hour prior to the start of her shift. The final incident was another failure to follow the proper reporting procedures. As a result, part of the production was shut down since there was no one present to operate her machine. 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 she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of November 28, 2006, reference 05, is reversed. Maria Espinosa is disqualified and benefits are withheld until she has earned ten times her weekly benefit, amount provided she is otherwise eligible. She is overpaid in the amount of \$600.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw