

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN M SMITH
Claimant

APPEAL NO. 09A-UI-16783-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HANDICAPPED DEVELOPMENT CENTER
Employer

OC: 10/18/09
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Handicapped Development Center (HDC) filed an appeal from a representative's decision dated November 2, 2009, reference 01, which held that no disqualification would be imposed regarding Dawn Smith's separation from employment. After due notice was issued, a hearing was held by telephone on December 14, 2009. Ms. Smith participated personally. The employer participated by Cynthia Simmons and Teresa Louw, Program Supervisors; Sabrina Mosley and Tracy Stinde, Residential Aides; Jessica Yuille, Shift Supervisor; and Linda Gill, Vice President. Exhibits One through Nine were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Smith was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Smith was employed by HDC from March 21, 2007 until October 13, 2009. She was last employed full time as a shift supervisor. She was discharged from the employment.

Ms. Smith received a written warning on April 30, 2009 because she left her shift early without checking with a supervisor. According to the warning, she had been told previously that she could not leave early unless she had permission to do so. On July 30, 2009, she received a written warning after she failed to attend a mandatory meeting on July 20. The meetings were held every Monday at the same time. Ms. Smith missed the meeting because she was moving but had not notified anyone that she would not be in attendance.

The decision to discharge Ms. Smith was due to the fact that she used profanity at the workplace on October 9, 2009. She twice used the word "fuck" while speaking with Tracy Stinde and Jessica Yuille in the living room area. On that same date, she was at the staff station when she loudly made reference to that "fucking bitch." Both incidents occurred in areas

where residents might be able to overhear. As a result of this final conduct, Ms. Smith was discharged on October 13, 2009.

Ms. Smith filed a claim for job insurance benefits effective October 18, 2009. She has received a total of \$2,992.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, the administrative law judge concludes that the employer has satisfied its burden of proof.

Ms. Smith left work early on April 30 without permission in spite of the fact that she had previously been told she could not do so. On July 20, she missed a mandatory meeting without giving the employer advance notice that she would not be there. She had to have known from the warnings she received that her continued employment with HDC was in jeopardy. In spite of the warnings, she again acted in a manner that was contrary to the employer's standards on October 9. The employer had a vested interest in making sure inappropriate language was not used in the presence of residents. Ms. Smith twice violated those standards on October 9, once in the living room area and again at the staff station.

Ms. Smith's conduct represented a pattern of disregarding the best interests of the employer as well as standards she knew the employer expected of her. Her conduct in leaving work early without permission, missing a mandatory meeting without notice, and using profanity at the workplace is sufficient to establish a substantial disregard for the employer's interests and standards. As such, it constitutes disqualifying misconduct and benefits are denied.

Ms. Smith has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated November 2, 2009, reference 01, is hereby reversed. Ms. Smith was discharged for misconduct in connection with her employment. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her

weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Smith will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs