

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Mothershead was employed by Assisted Living Concepts, Inc. from June 30 until July 28, 2005 as a part-time housekeeper. She worked from 20 to 25 hours each week. Ms. Mothershead was discharged because of her attendance.

On July 24, Ms. Mothershead was seen in the emergency room and was released to return to work the following day. She worked on July 25 and advised the employer that she had a doctor's appointment for the following day. She saw the doctor on July 26 but was not advised to remain off work. Ms. Mothershead did not report for work or contact the employer on July 27. She slept until the afternoon but did not attempt to contact the employer when she awakened. She did not go to work as scheduled on July 28 and did not contact the employer until that evening. Absences are to be reported at least two hours in advance of the scheduled work shift. Because of her two unreported absences, Ms. Mothershead was discharged from the employment. She had the ability to contact the employer to report her absences but did not.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Mothershead was separated from employment for any disqualifying reason. 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). Ms. Mothershead was employed with Assisted Living Concepts, Inc. for only one month. Her discharge was triggered by the fact that she had two consecutive unreported absences. She knew she was to report her absences to the employer and had the ability to do so. Although she may have overslept on July 27, this did not prevent her from making contact with the employer as soon as she awakened. She did not even contact the employer first thing in the morning on July 28 to explain her circumstances. Rather, she waited until that evening before attempting contact with the employer.

Ms. Mothershead knew or should have known without benefit of prior warnings that unreported absences were contrary to the employer's standards and might result in her separation from the employment. Two consecutive unreported absences constitute a substantial disregard of the type of behavior an employer has the right to expect. For the reasons cited herein, benefits are denied.

Ms. Mothershead has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated September 22, 2005, reference 01, is hereby reversed. Ms. Mothershead was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Mothershead has been overpaid \$813.00 in job insurance benefits.

cfc/kjw