

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER M STIVERS
Claimant

APPEAL NO. 08A-UI-00761-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**LIFE INVESTORS INSURANCE
COMPANY OF AMERICA**
Employer

**OC: 12/09/07 R: 03
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer, Life Investors Insurance Company of America (Life Investors), filed an appeal from a decision dated January 11, 2008, reference 03. The decision allowed benefits to the claimant, Heather Stivers. After due notice was issued a hearing was held by telephone conference call on February 6, 2008. The claimant participated on her own behalf. The employer participated by Human Resources Specialist Anne Hanson and Disability Benefits Specialist Denise Nolan. Exhibits One, Two, Three, Four and Five were 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:

Heather Stivers was employed by Life Investors from October 7, 2002 until December 7, 2007, as a full-time service representative. She was off work on medical leave and faxed documents to Disability Benefits Specialist Denise Nolan on November 20 and 26, 2007. The documents sent by Ms. Stivers stated her return to work date would be January 7, 2008. Ms. Nolan forwarded these to the medical director who reviews all such documents.

The medical director felt there was some discrepancy in the paperwork, the return to work date appeared to have been altered. Ms. Nolan asked the claimant to bring in the actual document she had used to fax the information on November 26, 2007, which she did the next day.

Ms. Nolan and Human Resources Specialist Anne Hanson called the claimant's doctor directly and spoke with the office nurse, Phyllis, on December 7, 2007. She was asked to fax the same documents from the claimant's file directly to Life Investors, and this was done. The return to work date on the two documents sent directly from the doctor's office is December 27, 2007.

The claimant was discharged by Ms. Hanson and Human Resources Manager Kate Barcoe on December 7, 2007, for falsification of the documents.

Heather Stivers has received unemployment benefits since filing a claim with an effective date of December 9, 2007.

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.

The documents the claimant faxed to the employer on November 20 and 26, 2007, were sent to her by the doctor's office and she forwarded them. She denies any knowledge of the altered dates, but no one except the claimant and her spouse handled them before submitting them to the employer. She initially alleged the documents were written by different nurses who might have mixed up the dates, but these are not different documents. A comparison of the documents sent by the claimant and those sent directly by the doctor's office clearly shows the dates are different and some alteration occurred.

Since the claimant and her spouse were the only ones to handle the documents before they were submitted to the employer, the alterations had to have occurred while in their possession. The material is clearly altered and constitutes falsification of documents submitted to the employer. This is a violation of the duties and responsibilities the employer has the right to

expect of an employee and is conduct not in the best interests of the employer. 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 January 11, 2008, reference 03, is reversed. Heather Stivers 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 \$2,982.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs