

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELISHA K OBADAL
Claimant

APPEAL NO. 09A-UI-18091-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ATRIUM VILLAGE INC
Employer

**Original Claim: 11/01/09
Claimant: Respondent (2R)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated November 25, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 13, 2010. Employer participated by Dorothy Goody, administrator; Karen Johnson, charge nurse; Steve Emerson, environmental supervisor; and Debbie Knoetnerus, assistant to the director. The claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Dorothy Goody, the testimony of Karen Johnson, the testimony of Steve Emerson, the testimony of Debbie Knoetnerus, and Employer's Exhibits 1 through 14.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a long-term care facility located in Hills, Iowa. The claimant worked as a full-time direct care worker/certified nursing assistant. The claimant's last day of work was September 25, 2009. She has not been terminated and is still considered an employee. On September 25, 2009, the claimant was asked to meet with Ms. Goody, as a new background check needed to be completed. Despite multiple requests, the claimant has not yet attended a meeting. Several meetings have been scheduled and numerous calls made to the claimant, but she has still not come in to complete the necessary forms for the new background check. Work is available for the claimant.

REASONING AND CONCLUSIONS OF LAW:

The representative's decision indicated that the claimant was dismissed from work on September 25, 2009, for misconduct. The evidence in this case established that the claimant was not dismissed on that date and has never been terminated by the employer. The employer informed the claimant that a new background check needed to be done and, despite numerous requests, the claimant has

not come in to meet with the administrator and complete the necessary forms. The claimant is not actually working for the employer for this reason. Accordingly, benefits are not allowed.

The next issue is overpayment of benefits.

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.

This matter is remanded to the claims section for the determination of any overpayment.

DECISION:

The representative's decision dated November 25, 2009, reference 01, is reversed. Unemployment insurance benefits shall be 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 overpayment issue is remanded to the claims section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw