

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

CATHERINE J HOLDER  
PO BOX 211  
GILMORE CITY IA 50541

HUMBOLDT QUALITY SOUTH INC  
800 – 13<sup>TH</sup> ST S  
HUMBOLDT IA 50548

Appeal Number: 04A-UI-00494-SWT  
OC 09/01/03 R 01  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 6, 2004, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 5, 2004. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Scott Marnan participated in the hearing on behalf of the employer with a witness, Sheryl Schekey.

FINDINGS OF FACT:

The claimant was employed part time for the employer as certified nursing aide from August 13, 2002 to December 4, 2003. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer and find their own replacements if they were not able to work as scheduled. On August 5, 2003, the director of

nursing issued a final written warning to the claimant as a result of her excessive unexcused absenteeism, which included instances when she was absent for work without notice to the employer and without finding a replacement.

The claimant was absent from work without notice to the employer and without finding a replacement on November 21, 22, and 23. The employer contacted the claimant to find out why she was absent from work and set up a meeting to discuss her employment status on December 1. The claimant failed to attend the meeting. The meeting was rescheduled for December 4, and the employer discharged the claimant for excessive unexcused absenteeism. The claimant explained that she was sick November 21 through 23, but she did not explain why she had not called or found a replacement.

The claimant filed a new claim for unemployment insurance benefits with an effective date of September 21, 2003. She filed for and received a total of \$472.00 for the weeks between November 30 and December 27, 2003. The claimant has already been determined overpaid for these weeks due to being determined unavailable for work.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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, (7) 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(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's unexcused absenteeism was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. She violated the work rule requiring employees to notify the employer and to find their own replacements. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The claimant was overpaid \$472.00 for the weeks between November 30 and December 27, 2003, due to this decision but for the same weeks that she was already determined overpaid in an earlier decision.

#### DECISION:

The unemployment insurance decision dated January 6, 2004, reference 02, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$472.00, but for the same weeks that she was already determined overpaid.

saw/b