

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHENIE K HOGAN
Claimant

APPEAL NO. 06A-UI-10189-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PHYLLIS CHANG MD PLC
Employer

**OC: 09/17/06 R: 03
Claimant: Respondent (2)**

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 October 9, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 1 and 8, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Audra King. Phyllis Chang participated in the hearing on behalf of the employer with witnesses, Judy Gerlitz and Deb Boyd. Exhibits 1 through 3 were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer from February 28, 2005, to September 15, 2006, as an office coordinator, which involved receptionist, scheduling, and billing and account duties. Phyllis Chang M.D., the owner of the medical clinic, is the overall supervisor of the clinic. The claimant was also required to work with and take direction from the office manager, Judy Gerlitz.

The claimant was informed and understood that under the employer's work rules, neglect of duty, being absent without authorization, and disrespectful or abusive conduct toward coworkers, were grounds for discipline. The employer had warned the claimant about losing her temper toward coworkers, most recently during her performance evaluation on May 18, 2006, in which the claimant was informed that outbursts of temper were unacceptable.

On September 15, 2006, Gerlitz had stayed home from work with her daughter who had been sick with a fever the previous day. Chang had requested that Gerlitz come in for a short time to complete some job duties and understood that Gerlitz would bring her daughter in with her. Gerlitz's office is in the break room of the clinic, so she planned to come in for an hour after lunch. When she arrived, the claimant was in the break room. The claimant has a high

susceptibility to upper respiratory illnesses and had mentioned it to Gerlitz and other staff. She knew that Gerlitz's daughter had been sick. She became upset because she believed Gerlitz ignored her medical condition. She complained about Gerlitz bringing her sick child into work. Gerlitz responded that she needed to talk to Chang because Chang had requested that she come in. She told the claimant that she was only going to be there for a short time. The claimant went back to the reception area, which is on the other end of the building from the break room, near the patient waiting room area.

Later, when Gerlitz went by the claimant's desk, the claimant yelled at Gerlitz that if she got sick, the employer would be paying her insurance deductible. Gerlitz again told the claimant to talk to Chang. About a half an hour later, Gerlitz left the break room to tell the claimant that she was about to leave. She met the claimant in the hallway. The claimant yelled at Gerlitz that she was irresponsible for bringing her daughter to the clinic. This was loud enough for the doctor and the nurse who with a patient at the time to hear the outburst. Gerlitz yelled back that the claimant could not talk to her like that.

The claimant then yelled that she was leaving. Gerlitz told her that there was no need for her to leave because Gerlitz was finished and was leaving. Gerlitz again directed the claimant to talk to Chang. The claimant disregarded the instruction, and as the claimant was leaving, Gerlitz told her, "fine, but that will be a half day of vacation." The claimant left without authorization from Chang and left the office without a receptionist for the afternoon.

When Chang learned about what had happened from Gerlitz, she decided to discharge her because of her repeated outbursts of temper and insubordination and because she left work without authorization. She also considered occasions in the past when she believed the claimant was untruthful to her. As a result, she discharged her on September 17, 2006.

The claimant filed for and received a total of \$618.00 in unemployment insurance benefits for the weeks between September 17 and October 14, 2006.

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 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 claimant's conduct on September 15, 2006, was a violation of known work rules, a willful and material breach of the duties and obligations to the employer, and a substantial disregard of the standards of civil behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. The claimant had been warned in the past about outbursts of temper at work. She interpreted Gerlitz's behavior as irresponsible, but objectively, Gerlitz exercised consideration in responding to a request from her supervisor by coming in for a short time after individuals would have been expected to be out of the break room. The reception area was on the other end of the building from Gerlitz's office, so the claimant's concern about transmitting germs was unreasonable. She was repeatedly told to discuss the situation with Chang but would not wait until the doctor was done with the patient. She did not receive permission to leave.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$618.00 in benefits.

DECISION:

The unemployment insurance decision dated October 9, 2006, reference 01, 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 \$618.00 in unemployment insurance benefits, which must be repaid.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw