

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHINDA L FORD**  
Claimant

**APPEAL NO. 13A-UI-03872-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**METOKOTE CORORATION**  
Employer

**OC: 08/05/12**  
**Claimant: Respondent (2/R)**

Section 96.5-2-1-a – Discharge  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Metokote Corporation filed a timely appeal from a representative's decision dated March 22, 2013, reference 03, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on May 7, 2013. Although notified, the claimant did not participate. The employer participated by Mr. Frank Chase, Hearing Representative and witness Ms. Megan Rogers, Human Resource Manager.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Richinda Ford was employed by Metokote Corporation from April 4, 2010 until August 6, 2012 when she was discharged for exceeding the permissible number of attendance infractions allowed under company policy. Ms. Ford was employed as a full-time production worker and was paid by the hour. Her immediate supervisor was Jeramiha Yuska.

Ms. Ford was discharged on August 6, 2012 when she exceeded the permissible number of attendance infractions allowed under company policy. Ms. Ford was aware of the company's attendance policy and was aware that she was subject to discharge if she exceeded the permissible number of attendance infractions. The claimant was also aware that if she provided a doctor's note some attendance violations could be minimized.

Ms Ford was given a step one warning for insubordination March of 2012. Claimant received a step two warning for attendance March 16, 2012 and a step three warning for attendance on April 3, 2012. The claimant was discharged when she continued to accumulate attendance infraction points after being warned. The final infraction points were assessed against Ms. Ford's attendance record on July 31, 2012 when she left early, on August 2, 2012 when she

left the production line and did not return, and on August 4 when the claimant called in absent without giving a reason.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the employer has sustained its burden of proof in showing disqualifying job misconduct. It has.

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.

871 IAC 24.32(7) provides:

(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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

No aspect for the contract of employment is more basic than the right of the employer to expect employees will appear for work on the day and hour agreed upon. Recurrent failure to honor that obligation shows a substantial disregard for the employer's interest, and thus may support a finding of misconduct in connection with the work.

The record in this matter shows that Ms. Ford had been absent, tardy or left early on numerous occasions and that the claimant had been appropriately warned by the employer that her attendance and punctuality was not satisfactory and could jeopardize her employment. Ms. Ford continued to leave work early and to call in absent without giving a reason after receiving the final warning from the company about her attendance and punctuality. There is no evidence in the record to show that the claimant's most recent attendance infractions were due to illness or that they were excused by the employer, therefore, the administrative law judge concludes that the employer has sustained its burden of proof in showing that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

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.

**DECISION:**

The representative's decision dated March 22, 2013, reference 03, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Claims Section for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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