

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT W UPTON**  
Claimant

**APPEAL NO. 08A-UI-07554-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OAKLEAF REAL ESTATE MANAGEMENT  
COMPANY**  
Employer

**OC: 07/20/08 R: 01  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Robert Upton filed an appeal from a representative's decision dated August 8, 2008, reference 01, which denied benefits based upon his separation from Oakleaf Real Estate Management Company. After due was issued, a hearing was held by telephone on September 4, 2008. Mr. Upton participated personally. The employer participated by Rhonda Mordhorst, Shelly O'Brien, Nancy Metcalf and Brenda Charbonneau.

**ISSUES:**

At issue in this matter is whether the claimant's appeal was timely and whether the claimant was discharged for misconduct in connection with his work.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from September 2006 until July 17, 2008. The claimant most recently held the position of community manager. Mr. Upton was employed on a full-time basis and was paid by salary.

A decision was made to terminate Mr. Upton from his position with the captioned organization that provides residential housing to elderly and low income recipients based upon the claimant's violation of company policies. The claimant had been warned in January 2008 to refrain from unauthorized removal of food and other items from a community food bank that was located at the facility. Mr. Upton had provided food stuffs, shaving materials and related items to a resident of a different facility without going through the proper channels. As the claimant's conduct jeopardized the employer's maintenance of the food bank and its facility, the claimant was warned and reminded of his general obligations as a community manager.

Under established policies solicitation of any nature is prohibited at the employer's facilities. The prohibition applies to outside solicitation as well as to any solicitation between residents, staff members and other similarly situated individuals. A decision was made to terminate

Mr. Upton when three or more residents complained to Brenda Charbonneau that the claimant had solicited insulin syringes and or insulin from them. One resident complained that because the claimant had solicited and accepted a substantial supply of insulin needles, that she had run out and had no authorization for her supply to be replenished. Based upon the repetitive nature of the complaints and what the employer considered to be patently inappropriate conduct on the part of the claimant, a decision was made to terminate Mr. Upton from his position with the organization.

The claimant deposited his appeal in this matter in a timely matter with the United States Postal Services. For reasons beyond the claimant's control, however, the mail was not picked up from the local mail depository and or delivered to Workforce Development until two days late.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes that Mr. Upton was discharged for misconduct in connection with the employment. It does.

The evidence in the record establishes that Mr. Upton knew or should have known that the organization's rule prohibiting the solicitation in any manner at its facilities would apply to staff as well as to outside vendors and residents. The evidence in the record establishes that Mr. Upton had been previously warned in January of 2008 regarding inappropriate practices and violation of company policy with respect to removing items from the community food bank and was reminded at that time of his obligations as community manager. A decision was made to terminate the claimant when three or more residents complained to company management that the claimant had solicited insulin and or insulin needles from them causing at least one of the residents to be in short supply without a means of obtaining replacements. Based upon the repetitive nature of the complaints regarding Mr. Upton's conduct, the administrative law judge concludes that the claimant's conduct was not an isolated instance of poor judgment.

The final incident that caused the claimant's discharge took place when the claimant opening announced that he had no insulin needles in a public area. Mr. Upton maintains that based upon this innocent statement a resident strenuously demanded that the claimant take approximately 70 insulin needles for his own use and the claimant did not see this act as being an act of solicitation. The administrative law judge finds that this testimony strains credibility. The evidence in the record establishes that the same resident subsequently complained that she had exhausted her supply and had no means of replenishing them.

Based upon the evidence as a whole, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant's conduct showed a disregard for the employer's interests and standards of behavior and thus was disqualifying under the provisions of the Iowa Employment Security Law.

The administrative law judge finds that the claimant's appeal in this matter was filed late with good cause as the appeal was picked up and delivered by the United States Postal Service late through no fault of the claimant.

#### **DECISION:**

The representative's decision dated August 8, 2008, reference 01, is hereby affirmed. The claimant was discharged under disqualifying conditions. Unemployment insurance benefits are

withheld until the claimant has worked in and been wages for insured work equal to ten times claimant's weekly benefit amount, providing that he is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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