

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KENIESHA D KINNEY**  
Claimant

**APPEAL NO. 08A-UI-05709-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ELECTRONIC DATA SYSTEMS CORP**  
Employer

**OC: 05/18/08 R: 02  
Claimant: Respondent (2)**

Section 96.5-1 - Voluntary Quit  
Section 96.3-7 - Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated June 10, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 10, 2008. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Cheryl Roethemeier participated in the hearing on behalf of the employer with witnesses, Michael Perry and Kevin Hamilton.

**ISSUE:**

Did the claimant voluntarily quit employment without good cause attributable to the employer?  
Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a call center representative from March 10, 2008, to April 14, 2008. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. Under the employer's attendance policy, employees receive progressive discipline, including an oral conversation, verbal counseling, written warning, and an attendance improvement plan, before being terminated from employment. The claimant went through all of the progressive discipline. She received an attendance improvement plan on April 8, 2008, after she was over an hour late for work due to an unscheduled appointment. She was informed that if she received another attendance occurrence, she would be discharged.

On April 14, 2008, the claimant was over two hours late for work without notifying the employer because she paid her power bill. The employer discharged the claimant due to excessive unexcused absenteeism.

The claimant filed for and received a total of \$679.00 in unemployment insurance benefits for the weeks between May 18 and July 5, 2008.

## 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.

871 IAC 24.32(7) provides:

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 excessive unexcused tardiness and 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 received a final warning for the exact same type of attendance occurrence that happened on April 14. She did not properly notify the employer that she was going to be late. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

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 \$679.00 in unemployment insurance benefits for the weeks between May 18 and July 5, 2008.

**DECISION:**

The unemployment insurance decision dated June 10, 2008, 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 \$679.00 in unemployment insurance benefits, which must be repaid.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs