

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARA HORVATH

Claimant

TOYOTA MOTOR CREDIT CORP

Employer

APPEAL NO. 14A-UI-06361-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/04/14

Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96.3-7A, B – Recovery of Overpayment
871 IAC 24.10 – Employer Fact Finding Participation

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated June 9, 2014, reference 02, that held the claimant was not discharged for excessive unexcused absenteeism on May 9, 2014 and benefits are denied. A hearing was held on July 14, 2014. The claimant did not participate. Amanda Hill, HR specialist, and Julie Magee, Collections manager, participated for the employer. Employer Exhibits 1 -7 was received as evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

The issue is whether claimant is overpaid unemployment benefits.

The issue is whether employer participated in department fact finding.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired on September 15, 2008, and last worked as a full-time collections/credit employee on May 9, 2014. The claimant received the employer attendance policy that provides for progressive discipline from a verbal counseling to a written warning to a final warning and termination.

The employer issued claimant a verbal warning on August 25, 2013 and first written warning on December 17 for various attendance violations. The employer issued claimant a final attendance warning on December 17, 2013 and a more recent final warning for the same reason on February 7, 2014. The latter warning let claimant know a future attendance issue could lead to discharge. Claimant was warned about taking excessive lunch breaks and late arrivals to work.

Claimant was scheduled to take a one-half hour lunch break from 4:30 p.m. to 5:00 p.m. The employer allowed some flexibility to the start time if claimant was dealing with a customer. Claimant left for lunch at 4:49 p.m. on May 6, 2014 that meant her half-hour return time was 5:19 p.m.

Claimant returned at 5:33 p.m. that meant she was 14 minutes late. Claimant's excuse was she got caught in traffic while returning from break and she stopped to talk to workers before clocking in. The employer lobby photo shows claimant arriving back from the break at 5:32 p.m. that is consistent with her third floor work station clock-in at 5:33 p.m. The employer discharged claimant on May 9, 2014 for repeated violations of its attendance policy after warnings.

Claimant received benefits totaling \$1,150 during a five-week period ending June 28, 2014 on her unemployment claim. There is no evidence of claimant fraud or misrepresentation to obtain these benefits. Manager Magee participated for the employer at department fact finding and provided information on the discharge issue as to attendance violations.

Claimant failed to respond to the hearing notice. There is no UI Appeals C2T control system record claimant called in with a phone number to be contacted for the hearing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 administrative law judge concludes employer established misconduct in the discharge of the claimant on May 9, 2014, for excessive "unexcused" absenteeism.

The employer issued claimant disciplinary warnings pursuant to its attendance policy to let claimant know she was in violation to the point of two final warnings. When claimant took an excessive lunch break on May 6 for no excusable reason she was discharged.

Iowa Code § 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.

The administrative law judge further concludes claimant is overpaid benefits totaling \$1,150 for the five weeks ending June 28, 2014 due to the disqualification imposed in this decision. Although she committed no act of fraud or misrepresentation to obtain the benefits, she is required to repay the overpayment as the employer participated in department fact finding.

DECISION:

The decision of the representative dated June 9, 2014, reference 02, is reversed. The claimant was discharged for misconduct in connection with employment on May 9, 2014. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. Claimant is overpaid benefits \$1,150.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs