

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**VICTORIA L LINEBURG  
PO BOX 416  
LE CLAIRE IA 52753-0416**

**PLEASANT VALLEY COMMUNITY  
SCHOOL DISTRICT  
ATTN SECRETARY  
PO BOX 332  
PLEASANT VALLEY IA 52767-0332**

**Appeal Number: 06A-UI-04332-RT  
OC: 03/12/06 R: 04  
Claimant: Respondent (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Pleasant Valley Community School District, filed a timely appeal from an unemployment insurance decision dated April 13, 2006, reference 01, allowing unemployment insurance benefits to the claimant, Victoria L. Lineburg. After due notice was issued, a telephone hearing was held on May 10, 2006, with the claimant participating. Jim Spelhaug, Superintendent of Schools; JoAnne Noble, Food Service Director; and Joan Hames, Food Service Manager; participated in the hearing for the employer. Mike Clingingsmith, Chief Financial Officer, was available to testify for the employer but not called because his testimony would have been repetitive and unnecessary. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a part-time food service worker most recently at Pleasant Valley Junior High, from December of 2000, until she was discharged on March 9, 2006. The claimant was discharged for insubordination and continuing and persistent rude and unacceptable behavior to co-workers, students, and staff.

On February 27, 2006, Joan Hames, Food Service Manager and one of the employer's witnesses, called the claimant and specifically told the claimant that she was to do the dishes that day because the person who usually did the dishes would be busy doing other things and learning other things. The claimant said that she would do so but then did not do the dishes. The dishes piled up and two other employees had to do the dishes later and then complained to Ms. Hames. Ms. Hames talked to the claimant and the claimant told her that she did not do the dishes because it was not necessary. The claimant was then discharged.

On February 23, 2004, the claimant received a written disciplinary memo because she was persistently rude to JoAnne Noble, Food Service Director and another one of the employer's witnesses. On that day Ms. Noble was attempting to explain to the claimant that she needed to work together with two new employees. The claimant said in a rude way, "I know that." The claimant then escalated her rude comments as Ms. Noble attempted to point out to the claimant that she was not working with the other workers and that her behavior was rude. Finally, the claimant told Ms. Noble that she (Ms. Noble) was having a bad day. At the same time the principal of the school where the claimant was then working, Riverdale Elementary, informed Ms. Noble that the claimant was rude and mean-spirited to children and employees.

The claimant was then moved from Riverdale Elementary to Pleasant Valley Junior High to give her new surroundings and with the hope that she would get along better with the people there. However a new employee arrived and Ms. Noble learned that the claimant was treating the new employee unfairly. She talked to the claimant about this but the claimant denied any such responsibility. Pursuant to her claim for unemployment insurance benefits filed effective March 12, 2006, the claimant has received unemployment insurance benefits in the amount of \$768.00 as follows: \$96.00 per week for eight weeks from the benefit week ending March 18, 2006 to the benefit week ending May 6, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties agree, and the administrative law judge concludes, that the claimant was discharged on March 9, 2006. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. Although it is a close question, the administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that that the claimant was discharged for disqualifying misconduct. The employer's three witnesses credibly testified that the claimant was discharged for continued and persistent insubordination and rude and unacceptable behavior to students, co-workers, and staff. Employer's witnesses testified as to several incidents as set out in the Findings of Fact. Initially the claimant denied everything but her denials are not credible. For a while during the hearing the claimant insisted that she had always done the dishes as instructed by Joan Hames, Food Service Manager and one of the employer's witnesses. However, Ms. Hames adamantly testified that the claimant did not and eventually the claimant finally admitted that she did not do the dishes. Ms. Hames is a supervisor of the claimant and it is the claimant's responsibility to follow directions of Ms. Hames. Ms. Hames credibly testified that when she confronted the claimant the claimant said that she did not do the dishes because it was not necessary but the evidence establishes that the dishes piled up and other employees had to do them later. The claimant did concede that she got the disciplinary memo on February 23, 2004 but denied any responsibility and argued that Ms. Noble verbally attacked the claimant. However, the testimony of JoAnne Noble, Food Service Director and one of the employer's witnesses, was more credible than that of the claimant. She testified forthrightly and directly that she did not attack the claimant but the claimant kept escalating the situation and finally the claimant told Ms. Noble that she

(Ms. Noble) was having a bad day. Even the claimant conceded that she did so. Regarding the rudeness to children, the claimant testified that the children were out of control, but the administrative law judge notes that this occurred while the claimant was a food service worker at an elementary school. One can expect elementary students to be loud and boisterous and it is up to the claimant to deal with that. Further, there was evidence that the students were no more out of control at that school than at any other school. Finally, Ms. Noble credibly testified that the principal of the school informed her that not only the students but also the staff felt that the claimant was rude and mean-spirited.

The claimant was then moved from the elementary school to a junior high school to see if she could work better there but the claimant had difficulties with a new employee and was given a verbal warning to that effect by Ms. Noble in September of 2005.

The administrative law judge concludes that the claimant was rude and insubordinate to others. There are too many people testifying to problems with the claimant either directly or by hearsay. It appears that the claimant had difficulties in getting along with a number of people. The administrative law judge must conclude, therefore, that the claimant was rude and insubordinate and her behavior was unacceptable. The claimant received warnings for this. Accordingly, the administrative law judge concludes that the claimant's behavior was persistently and continually rude and insubordinate and unacceptable and this continuing conduct were deliberate acts constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evince a willful or wanton disregard of the employer's interests and are, at the very least, carelessness or negligence in such a degree of recurrence all as to establish disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant, until, or unless, she requalifies for such 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.

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.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$768.00 since separating from the employer herein on or about March 9, 2006 and filing for such benefits effective March 12, 2006. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of April 13, 2006, reference 01, is reversed. The claimant, Victoria L. Lineburg, is not entitled to receive unemployment insurance benefits, until, or unless, she requalifies for such benefits, because she was discharged for disqualifying misconduct. The claimant has been overpaid unemployment insurance benefits in the amount of \$768.00.

cs/pjs