

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA SPRIET**

Claimant

**APPEAL NO. 07A-UI-08743-ET**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**APAC CUSTOMER SERVICES OF IOWA**

Employer

**OC: 03-25-07 R: 04  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 4, 2007, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 1, 2007. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Turkessa Newsone, Human Resources Generalist, and Angie Johnson, Operations Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as full-time customer service representative for Apac Customer Services from November 8, 2004 to August 9, 2007. On May 1, 2007, the employer declared an attendance point amnesty and let all employees start with zero points for the rolling calendar year, allowing eight points total before termination. The claimant was absent May 17, 2007, because her daughter was ill; and May 20, May 27, June 4, June 5, and July 21, 2007, without providing a reason. On August 2, 2007, the claimant called in to ask for the day off to take her daughter to the doctor, and the employer told her she could go if she did a “self-trade” and found someone to work for her which she did. On August 3, 2007, the claimant called and said she would not be in and when asked why, she explained she was angry that she had to find her own replacement August 2, 2007. On August 4, 2007, the claimant called and said she would not be in because she did not have childcare. She also told the employer she could only work every other Saturday because of childcare issues. The claimant and Human Resources Generalist Turkessa Newsone met August 8, 2007, to discuss the possibility of the claimant using FMLA, but they discovered the claimant had not worked enough hours to qualify. Operations Manager Angie Johnson joined the conversation and told the claimant she had eight attendance points and the claimant indicated her absences were due to her daughter’s health,

childcare, and “burnout.” Ms. Johnson did not want to terminate the claimant’s employment and asked why she did not come in and talk to her about her attendance and asked the claimant how long she would stay if the employer made an exception to the attendance policy. The claimant stated she wanted August 31 and September 1, 2007, off work and did not want to find her own replacement and could find another job if she did not get it. She made it clear she would not come in if she was not granted those days off. Ms. Newsone spoke to Human Resources and the decision was made to terminate the claimant’s employment.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant accumulated eight attendance points between May 17 and August 4, 2007, with the first of those absences being attributable to her daughter’s illness. The employer did not want to terminate her employment and asked what type of commitment she could make to the job if given another chance. The claimant indicated she would get another job if she did not get August 31 and September 1, 2007, off work, and the

employer felt it had no choice but to terminate her employment at that time. Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of his employer. Myers v. IDJS, 373 N.W.2d 507 (Iowa App. 1985). The claimant violated the employer's attendance policy and said she would not work certain scheduled workdays in the future. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The September 4, 2007, reference 02, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,106.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw/kjw