

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TANYA L LARSON**  
Claimant

**APPEAL NO. 13A-UI-09128-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOME CHOICE LLC**  
Employer

**OC: 07/07/13**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Tanya Larson, filed an appeal from a decision dated July 31, 2013, reference 01. The decision allowed benefits to the claimant, Tanya Larson. After due notice was issued, a hearing was held by telephone conference call on September 12, 2013. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Executive Director Koleen Herlocker.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Tanya Larson was employed by Home Choice from April 16 until June 25, 2013 as a part-time caregiver. She was required to maintain an active phone number or access to the internet so she could be contacted by the employer for spot assignments or to review her schedule. If any changes occurred she was required to notify the employer immediately.

Ms. Larson was scheduled to work at 7:00 a.m. on June 21, 2013, but was no-call/no-show to work. Several attempts were made to contact her at her phone number of record and also at her emergency contact numbers. The employer received no response and she was taken off the schedule so that the employer's clients would have the necessary care provided.

On June 25, 2013, the claimant called Client Service Director Steve Melchoir and said her cell phone had not been working and she had no internet as well. She was informed she had been taken off the schedule for failure to appear for her scheduled shift and not advising the employer of changes in her communication status.

Tanya Larson has received unemployment benefits since filing a claim with an effective date of July 7, 2013.

## REASONING AND CONCLUSIONS OF 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.

The claimant was no-call/no-show for a scheduled shift on June 21, 2013. This meant one of the employer's clients was without the needed caregiver until a substitute could be found. Ms. Larson also failed to maintain her communication status by phone or internet as required, or to notify the employer of the changes. This put her beyond the ability of the employer to contact her when she missed her shift or to even offer her other work.

This type of communication is vital to the employer so it may provide the necessary staffing for its clients. The employer has the obligation to provide the promised staffing and care giving to its clients and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in

the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The representative's decision of July 31, 2013, reference 01, is reversed. Tanya Larson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code section 96.3-7-b is remanded to the Agency.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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