

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMELY GUILLEN
Claimant

APPEAL NO: 09A-UI-18556-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**FIRST ADVANTAGE MEMBERSHIP
SERVICES INC**
Employer

OC: 11/08/09
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated December 3, 2009, reference 01, that held the claimant was not discharged for misconduct on November 10, 2009, and benefits are allowed. A telephone hearing was held on January 26, 2010. The claimant did not participate. Christy Hensley, HR Director, and Neal Taylor, Assistant Call Center Manager, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment as a full-time CSR on June 2, 2008, and last worked for the employer on November 11, 2009. The employer attendance policy is that seven occurrences within 90 days is grounds for termination.

The claimant was issued a written warning for attendance issues that she received on July 29, 2009 for incurring six instances of tardiness from June 1 to July 28. The claimant was issued a final warning on September 2 for absences on August 5, 6 due to illness, and missing work due to a transportation problem on August 31. The warning advised the claimant that further corrective action could result in termination.

The claimant left work without permission from Manager Taylor at 4:00 p.m. prior to the end of her work shift at 5:30 p.m. on November 6, and she was discharged on November 11 for seven occurrences of absenteeism. The claimant has received benefits on her unemployment claim.

The claimant failed to respond to the hearing notice.

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(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 the employer has established that the claimant was discharged for misconduct in connection with employment due to excessive absenteeism on November 11, 2009.

The employer advised the claimant by issuing a written and final warning that her job was in jeopardy due to attendance policy violations. Missing work due to a transportation problem, repeated tardiness, and leaving work prior to the end of a work shift without permission is misconduct.

Iowa Code section 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.

Since the claimant has received benefits on her current claim, this overpayment issue is remanded to Claims for determination.

DECISION:

The department decision dated December 3, 2009, reference 01, is reversed. The claimant was discharged for misconduct on November 11, 2009. 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. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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