

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

HEATHER M MARTIN  
505 E 6<sup>TH</sup> ST  
DAVENPORT IA 52802

APAC CUSTOMER SERVICES INC  
C/O TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-08773-HT  
OC: 07/11/04 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  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, APAC, filed an appeal from a decision dated August 4, 2004, reference 01. The decision allowed benefits to the claimant, Heather Martin. After due notice was issued a hearing was held by telephone conference call on September 7, 2004. The claimant participated on her own behalf and with a witness Josephine Jackson. The employer participated by Operations Manager Katy Vance, Benefits Coordinator Mary Huyten and Human Resources Coordinator Turkeesa Hill. The employer was represented by UC Express in the person of Dawn Fox. Exhibit One was admitted into the record.

#### 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: Heather Martin was employed by APAC from December 3, 2001 until July 1, 2004. She was a part-time customer service representative.

The claimant's last day of work was June 11, 2004. She called in every day she was scheduled to work beginning June 12, 2004, leaving a voice mail message stating her daughter was ill. Ms. Martin did not have any sick leave or FMLA left to take this time off and never contacted her supervisor, the benefits coordinator, or the operations manager to discuss her extended absence. The company attendance policy requires employees to provide a doctor's statement for any absence due to illness which lasts more than three days and to provide it by the fourth day. Ms. Martin had received the attendance policy but did not provide APAC with any doctor's statements.

When she would call in to indicate she was going to be absent the claimant left her phone number. However, when the employer attempted on several occasions to call her at that number, it was not operational. This was a cell phone, which operated with pre-paid minutes, and Ms. Martin had let the number of available minutes expire so she could not receive the calls.

On June 24, 2004, the claimant was sent a certified letter to her last known address indicating she must contact the employer no later than 4:00 p.m. on June 30, 2004. The letter was returned because it was an invalid address. Ms. Martin was eventually notified by Operations Manager Katy Vance that she had been released for job abandonment.

Heather Martin has received unemployment benefits since filing a claim with an effective date of July 11, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes 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, (7) provide:

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).

(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 claimant was aware she did not have any FMLA or sick leave available to cover her absences. Although she did call in each day to notify the employer she would be absent, she did not make herself available to her supervisors by having the correct address on record or a telephone which was operational. APAC attempted to contact her to obtain doctor's excuses as required and try to work out some arrangement to preserve her job. Ms. Martin did not establish what, if any, efforts she made to obtain child care for her daughter during this illness. In addition, she made no attempt whatsoever to try and talk to a supervisor personally to find out her status when she had been gone for so many scheduled shifts without any leave time available.

Because the claimant did not provide the doctor's excuses as required, nor make herself available to be contacted by the employer to discuss options, the administrative law judge cannot consider these absences to be properly reported or excused. The claimant is disqualified.

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 claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of August 4, 2004, reference 01, is reversed. Heather Martin is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$1,386.00.

bgh/kjf