

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLY S COMBS**

Claimant

**APPEAL NO. 09A-UI-15307-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCOTLAND COUNTY CARE CENTER**

Employer

**Original Claim: 09/13/09  
Claimant: Respondent (1)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated October 2, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 12, 2009. The employer participated by Shelli Slaughter, director of nursing. The claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Shelli Slaughter and Employer's Exhibit 1.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case is a long-term care facility located in Memphis, Missouri. The claimant was hired on June 3, 2009, as a full-time charge nurse. She was terminated on September 3, 2009, for having excessive absenteeism within her 90-day probationary period. The claimant missed three days due to illness that was reported to the employer prior to the start of the shift as required by the employer's attendance policy. That attendance policy also stated that during the probationary period, an employee could miss one day during the first 20 days and an additional day from Day 20 through Day 90. Since the claimant missed three days, she was terminated in accordance with the written attendance policy. The claimant was aware of the policy.

**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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct is found in deliberate acts or omissions that constitute a material breach of the workers' duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absences must be both excessive and unexcused. Absence due to illness and other excusable reason is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7)

In this case, the employer has shown excessive absenteeism and the claimant's failure to comply with its attendance policy. However, the claimant's absences were due to personal illness and therefore deemed excused so long as the employee properly notified the employer of the absence. Ms. Slaughter testified that the claimant did call in to report her illness prior to the start of her shift and therefore complied with the employer's notification policy. Since the claimant's absences are deemed excused absences under Iowa unemployment insurance law, the claimant was not discharged for misconduct. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated October 2, 2009, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw