

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER K STEWART
Claimant

APPEAL NO. 09A-UI-07057-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RON SAN ENTERPRISES
Employer

**Original Claim: 03/22/09
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

Ron San Enterprises, Inc. filed a timely appeal from an unemployment insurance decision dated April 30, 2009, reference 02, that allowed benefits to Jennifer K. Stewart. After due notice was issued, a telephone hearing was held May 26, 2009, with part-owner Sandra Conrad participating for the employer. Ms. Stewart did not provide a telephone number at which she could be contacted.

ISSUE:

Was the claimant discharged for excessive unexcused absenteeism?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Jennifer K. Stewart was employed part-time as bartender by Ron San Enterprises, Inc., doing business as Days Inn and Spirits Bar and Grill. She was hired on March 13, 2009, to work Saturdays. She worked on March 13 but called the business on the following Saturday to say that she would be unable to work because of a family situation. When Vice President Sandra Conrad called Ms. Stewart on the following day to find out more about the absence, Ms. Stewart failed to provide any further explanation for her absence. Therefore, Ms. Conrad discharged her.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does not.

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.

Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(8). On the other hand, the Supreme Court of Iowa has ruled that a single unexcused absence is not sufficient to establish excessive unexcused absenteeism. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989).

The evidence in this record establishes that Ms. Stewart was discharged for a single absence. Whether or not that absence was unexcused, no disqualification may be imposed because of the Sallis doctrine.

DECISION:

The unemployment insurance decision dated April 30, 2009, reference 02, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw