

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TANYA M JEFFRIES
Claimant

APPEAL NO. 10A-UI-10583-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 06/27/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 19, 2010, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on September 15, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Dan Speir participated in the hearing on behalf of the employer with a witness, Mike Barger.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer from March 2009 to June 10, 2010, as a clerk. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. She was absent on January 26, January 28, January 30, February 2, February 3, February 11, and April 18. The absences were due to illness or childcare problems. The claimant was warned in May 2010 that she would be discharged if she missed any additional work after she missed work on May 1, 2, and 3 due to childcare problems.

The claimant was absent due to illness on May 9, June 13, and 14 with proper notice to the employer. She was scheduled to attend training on June 16, but she was absence without notifying the employer. On June 17, the claimant got into an altercation and had a black eye. She called in and said she did not want to report to work because of the black eye. She was informed that she was discharged because of her repeated absenteeism.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant had a history of absenteeism. Although some of her absences were due to illness and were properly reported, which would make them excused for unemployment insurance purposes, she also had instances where she was absent for reasons other than illness and without proper notice. She knew her job was in jeopardy yet chose not to go into work on June 17. She has not shown that she was unable to work on June 17. Therefore, she was discharged for excessive unexcused absenteeism, which is considered work-connected misconduct under the law.

DECISION:

The unemployment insurance decision dated July 19, 2010, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw