

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA S BARNES

Claimant

APPEAL NO. 10A-UI-07735-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES HEATING AND COOLING

Employer

OC: 04/18/10

Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Des Moines Heating and Cooling filed an appeal from a representative's decision dated May 19, 2010, reference 01, which held that no disqualification would be imposed regarding Linda Barnes' separation from employment. After due notice was issued, a hearing was held by telephone on July 15, 2010. Ms. Barnes participated personally. The employer participated by Craig Beveridge, Owner, and Laurie Fontana, Office Manager.

ISSUE:

At issue in this matter is whether Ms. Barnes was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Barnes began working for Des Moines Heating and Cooling on December 29, 2008. She was hired to work full time handling the accounts receivable and acting as receptionist. She was discharged because of her attendance.

Ms. Barnes called in sick on December 1 and December 16, 2009. She did not call or come to work on December 2, 17, and 18. On December 19, Craig Beveridge called and asked her for a doctor's statement to cover her absences of December 16, 17, and 18. In response, she left him a message indicating that she was offended that she would need to provide a doctor's statement since she was his mother. She was discharged the same day. Ms. Barnes had not received any warnings about her attendance. She had received a warning on November 17 because of the manner in which she posted checks in the register. She had her wages reduced on November 30 because she could not type.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321

N.W.2d 6 (Iowa 1982). It is true that Ms. Barnes did not have an exemplary attendance record. However, the employer never warned her that her continued employment was in jeopardy due to either the number of times she was absent or her failure to report some of the absences. Since the employer had given her a warning regarding posting checks, the employer certainly had the ability to give her a warning regarding her attendance issues.

By not warning Ms. Barnes about her attendance, the employer did not put her on notice that she needed to take different steps regarding her attendance or she would be discharged. She may have taken a lax approach to her attendance because she was working for her son. It was the employer's responsibility to notify her that the familial relationship did not change what was expected of her as an employee. Since she was not warned about her attendance, the administrative law judge concludes that she did not deliberately or intentionally act in a manner she knew to be contrary to the employer's interests or standards.

For the above reasons, it is concluded that the December 19, 2009 discharge was not for disqualifying misconduct. It was certainly the employer's right to discharge Ms. Barnes. However, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983).

DECISION:

The representative's decision dated May 19, 2010, reference 01, is hereby affirmed. Ms. Barnes was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css