

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER FRANK
Claimant

APPEAL NO: 12A-UI-09385-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

OC: 07/08/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Jennifer Frank (claimant) appealed an unemployment insurance decision dated July 27, 2012, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from ABCM Corporation (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Mason City, Iowa, on October 15, 2012. The claimant participated in the hearing. The employer participated through Administrator William Byerly and Director of Nursing Rosemary Tobin. Employer's Exhibits One through Five and Claimant's Exhibit A were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time certified nursing assistant from August 24, 2009 through July 3, 2012, when she was discharged for two no-call/no-shows within eight days. The employer has a progressive disciplinary policy, but its Personnel Guidebook specifically states that it is up to the employer's discretion as to whether to follow that progressive policy or not. When an employee misses a weekend shift, they are required to make up that shift on the following weekend and the claimant was aware of that policy. The employer issues a warning for the first no-call/no-show but terminates the employee after the second one, provided it occurs within a 12-month period.

The claimant was a no-call/no-show for her 6:00 a.m. shift on Sunday, June 24, 2012. She later called the director of nursing and reported that she arrived home on Saturday night and "found her daughter trying to commit suicide." The claimant testified that she took her 19-year-old daughter to the hospital at approximately 8:00 a.m. on Saturday morning. She did not call the employer because her mind was on other things.

The employer issued her a written warning on June 25, 2012 when she returned to work and the claimant signed the warning. She was scheduled to work on Sunday, July 1, 2012 to make up for that absence but she was a no-call/no-show again on July 1, 2012. The director of nursing was informed and she sent the claimant a text message asking her what was going on. The claimant responded that she was continuing to have problems with her daughter. The employer discharged her on July 3, 2012.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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.

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on July 3, 2012 for two no-call/no-shows within an eight-day period. She signed a warning for the first no-call/no-show but failed to call or report to work on the following Sunday, which she was only scheduled to work to make up for the previous Sunday. 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. 871 IAC 24.32(7).

While the reasons for the claimant's absences were reasonable, she failed to report those absences when she could have easily done so. The fact that she had just received a warning for her first no-call/no-show should have put her on notice that her job was in jeopardy. The absences were not excused and two no-call/no-shows within eight days is excessive. The claimant's no-call/no-shows demonstrates an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 27, 2012, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw