

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GINNY L KELLEY
Claimant

APPEAL NO. 11A-UI-08349-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOCUS SERVICES LLC
Employer

**OC: 05/15/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 16, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 19, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Kelly Hoftender participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a customer service agent for the employer from July 21, 2008, to May 24, 2011. She was verbally warned on May 6, 2011, for not working all her scheduled hours on May 3. She received a written warning on May 20 for not working her scheduled hours on May 10. Hours worked are based on the hours logged in to the employer's system taking calls. The claimant suffers from a medical condition that prevented her from being at her workstation throughout her shift, which caused her to be unable to work her hours.

On May 17, the claimant received a call that her grandmother had been taken to the hospital. She requested permission to leave work early from her supervisor. Her supervisor told her that she could leave but would receive a warning. She was warned about this on May 20.

On May 19, the claimant received an insect bite while working that day. She had an adverse reaction to the bite, and her supervisor gave her permission to leave to seek medical attention. She went to the hospital for treatment and was excused from working by the doctor. Despite this, the employer issued a final written warning on May 20 for failing to work her scheduled hours. The claimant had been injured at work on April 26. She received paperwork to report the injury. She brought the documents into work on May 20 and asked for assistance filling them out. As a result, she did not work all her scheduled hours that day.

The claimant was sick and unable to work on May 23 and 24. She reported to the employer's place of business each day to notify the employer that she was unable to work. She went to the emergency room on May 26 because her condition had not improved and received a doctor's excuse for May 22 through May 26.

The employer discharged the claimant on May 26, 2011, for excessive 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).

871 IAC 24.32(7) provides:

Excessive unexcused absenteeism. 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.

The evidence establishes the claimant's absences from work were for legitimate medical reasons and were properly reported. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated June 16, 2011, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs