

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA M BURK
Claimant

APPEAL NO. 11A-UI-03890-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

OC: 04/25/10
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 16, 2011 (reference 02) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on April 19, 2011. Claimant participated. Employer participated through human resources business partner Karen Malloy and unit director Wendy Miller. Employer's Exhibit 1 was admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time as a patient care technician and was separated from employment on February 16, 2011. On February 7 she left early without notifying a manager or charge nurse. Her five-year-old child was being sent home on the school bus unexpectedly and she looked for the charge nurse Angela but could not find her and did call her from the parking lot five minutes later and explained what was going on. She had no warnings in writing about attendance or tardiness but had verbal discussions about the issue. On December 20 she was a no call-no show because of not realizing she had to work after schedule changes because of her school schedule. Claimant does not recall a meeting on December 7 about tardiness but does recall tardiness on September 26 (transportation issue) and October 23 (alarm failure). She was not aware of tardiness on August 26, 31, and December 7, 2010 or January 12 and 19, 2011. On January 31 she reported her absence due to an ill child. On December 9, 2010 Miller warned her about calling in after the shift on November 21 due to pregnancy issue. On November 6 she called in after the two-hour time frame before her shift began. On October 10 she was a no call-no show because she did not know she was scheduled. The employer distributes the six-week schedule in writing and via e-mail. On September 23 she called in because of a child (age 8) with a fever who was kept out of school. The child's father was not available to care for the child outside of scheduled visitation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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(7) provides:

(7) 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Inasmuch as employer had not warned claimant that her job was in jeopardy about attendance and claimant reported the need to leave early to the charge nurse Angela, it has not met the burden of proof to establish a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

DECISION:

The March 16, 2011 (reference 02) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs