

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY J PRAZAK
Claimant

APPEAL NO. 13A-UI-07656-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

DIAMOND JO WORTH LLC
Employer

OC: 06/02/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated June 21, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, this case came on for hearing on August 21, 2013, by telephone conference call. The claimant participated personally. The employer participated by Nancy Vince, director of human resources. Robin Moore served as hearing representative for the employer. The record consists of the testimony of Nancy Vince and the testimony of Mary Prazak.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact: The employer is a casino. The claimant was hired on March 29, 2012, as a part-time slot ambassador. Her last day of work was June 2, 2013. She was terminated on June 4, 2013, for exceeding the permissible number of attendance points.

The claimant's attendance record is as follows:

September 20, 2012	Illness
November 15, 2012	Illness
November 16, 2012	Illness
November 28, 2012	Illness
December 19, 2013	Left Early
January 3, 2013	Left Early
February 6, 2013	Family Emergency
February 20, 2013	Illness
February 21, 2013	Illness
February 22, 2013	Illness

March 13, 2013
May 30, 2013

Left Early
No call/no show

The employer has a no fault attendance policy. When an individual reaches 10 points, termination results. The claimant was aware of that policy.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matters of personal responsibility, such transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984) Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7). The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. Although excessive, unexcused absenteeism is a form of misconduct, the employer's attendance policy does not dictate whether there has been excessive unexcused absenteeism. That determination is made by Iowa law. In

Iowa, personal illness properly reported is considered an excused absence. The claimant had only one and possibly two unexcused absences. The rest of her absences were due to personal illness properly reported. The employer may have shown excessive absenteeism but not unexcused absenteeism. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated June 21, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs