

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTINA M MYER**  
Claimant

**APPEAL NO. 08A-UI-02955-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VANTEC INC**  
Employer

**OC: 02/24/08 R: 01  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge  
Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant, Christina Myer, filed an appeal from a decision dated March 20, 2008, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 9, 2008. The claimant participated on her own behalf. The employer, Vantec, participated by Human Resources Manager Marilyn Fisher and Human Resources Assistant Shirley Frost.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits and whether she is able and available for work.

**FINDINGS OF FACT:**

Christina Myer was employed by Vantec from August 24, 2007 until February 19, 2008, as a full-time machine operator. She worked 6:30 p.m. until 6:45 a.m., alternating three days per week and then four days per week. At the time of hire she received a copy of the employee handbook which set out the attendance policy. The policy considers an absence to be unexcused if it is “undocumented.” Absences due to illness will be excused if the employee provides a doctor’s excuse.

Ms. Myer’s last day of work was January 30, 2008 and she was absent after that. She did call in and speak with Supervisor Bob Lee every day and he told her to contact Human Resources Manager Marilyn Fisher to discuss her on-going absences, but she never did. The claimant met with Human Resources Assistant Shirley Frost at some point during that period of absence and was told to give her supervisor any doctor’s notes she had, but this was also not done.

Ms. Myer missed eight shifts and went to an emergency room for treatment only three of those times, and did not get a doctor’s statement for any of the visits. The employer sent her a letter on February 19, 2008, notifying her she was considered a voluntary quit under the company policy which considers five undocumented absences to be a resignation.

The claimant is still suffering from the gallbladder condition and has not been released to return to work without restrictions. She believes, in her own opinion, she is available to work part time but all of her base period wages are from full time employment.

**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.

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.

The employer considers the claimant to have voluntarily quit under its own attendance policy but the record establishes this was a discharge for excessive absenteeism. Although the claimant did call in her absences, she was informed more than once she must bring in doctors' statements verifying the absences and to consult with the human resources manager to discuss the prolonged absences. If she had provided statements from the doctor' who treated her on the three occasions she went to the emergency room, those absences would have been excused. Her failure to follow instructions from her supervisor and abide by the company

policies means those absences are unexcused. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant is also not currently able and available for work as she is still suffering from the same gallbladder problems which caused her to miss work. No doctor has established what, if any, restrictions are imposed on her and in her estimation is only able to work part time, although all her base period wages are from full time work. She is therefore not able and available to work until released without restrictions by a physician.

**DECISION:**

The representative's decision of March 20, 2008, reference 01, is affirmed. Christina Myer is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is not eligible until she is able and available for work to the same extent as she was during her base period.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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