

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THERESA A GREGORY**  
Claimant

**APPEAL NO: 11A-UI-10709-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SPHERION STAFFING LLC**  
Employer

**OC: 06/19/11**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's June 19, 2011 determination (reference 04) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. The employer responded to the hearing notice, but was not available for the hearing when called. The employer did not respond to the message left at the time of the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in early January 2011. During the first month of the claimant's employment, she did not understand that she needed to clock in on her phone. She believed she was clocked in when she swiped her badge when she went into the office. After the employer talked to her about being late for work, the claimant explained what she had done to clock in the first month of her employment. The claimant understood her supervisor would take the necessary steps to correct the situation so the first month where it appeared she was late for work when she was not.

During the early morning hours of June 20, the claimant learned her sister had been in a serious motor vehicle accident. The claimant went to her sister's home to take care of her sister's children. She also took steps to arrange for a childcare provider. About 12 hours before the claimant was scheduled to work on June 20, she called the employer and told a supervisor she was unable to work that day because she had to watch her sister's children and make childcare arrangements. The claimant notified the employer on June 21 that she was again unable to work because she had to make childcare arrangements.

The claimant went to work on June 22 and worked as scheduled because she had found a childcare provider. On June 23, the employer informed the claimant her assignment was over because of her absences and tardies.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

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. 871 IAC 24.32(8).

The claimant's most recent absences occurred as a result of an emergency situation. The evidence presented at the hearing indicates the claimant properly reported her absence to the employer on June 20 and 21. Since the claimant's sister had been seriously injured in a motor vehicle accident and the claimant took care of her sister's children and made arrangements for a childcare provider in two days, the claimant established reasonable grounds for her June 20 and 21 absences.

Even though the employer may have had justifiable business reasons for discharging the claimant, the facts do not establish that she committed work-connected misconduct. As of June 19, 2011, the claimant is qualified to receive benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

**DECISION:**

The representative's June 19, 2011 determination (reference 04) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of June 19, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/css