

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER D CARPENTER
Claimant

APPEAL NO: 12A-UI-03087-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST
Employer

**OC: 02/05/12
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant appealed a department decision dated March 15, 2012, reference 01, that held she voluntarily quit without good cause on December 2, 2011, and benefits are denied. A telephone hearing was scheduled for April 11, 2012. The claimant participated. The employer did not participate.

ISSUES:

Whether the claimant was discharged for misconduct in connection with employment.

Whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment in August 2008, and last worked for the employer as a part-time general worker at Merrill Middle School on October 23, 2011. She informed the employer in July she was pregnant. On October 23 she had a pre-term labor episode and the doctor ordered bed rest through the remainder of her pregnancy.

She provided the employer with the doctor statement she needed to be off work for the remainder of her pregnancy. On December 6 she advised the employer of the birth of her child. The employer sent her a certified letter she was terminated effective December 9 for excessive absenteeism with a reference to FMLA. The claimant had received no prior employer warning that it considered her absence due to pregnancy was unexcused to the point she could be terminated.

Claimant was released to return to work without restriction by her doctor on January 2, 2012.

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(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 administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on December 9, 2011.

A period of absence due to properly reported illness (or pregnancy) is excusable. If the employer had an issue with the extended absence, it needed to provide claimant with a warning her job was in jeopardy in order to give her an opportunity to respond. The employer termination for absenteeism without warning fails to establish job disqualifying misconduct.

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 administrative law judge further concludes claimant is able and available for work. Her pregnancy period ended with the birth of her child on December 6, and an unrestricted medical release to return to work on January 2.

DECISION:

The department decision dated March 15, 2012, reference 01, is reversed. The claimant was not discharged for misconduct on December 9, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css