

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIRSADA MUJKANOVIC
Claimant

APPEAL NO. 08A-UI-00355-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOODS INC
Employer

**OC: 12/16/07 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 8, 2008, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 28, 2008. Claimant participated personally and was represented by Marty Ozga, Attorney at Law. Employer participated by Debra Jones, Office Manager; Mike Hixson, Store Director; and Walt Blake, Vice President. Exhibit One was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 6, 2007.

Claimant was discharged on December 5, 2007 by employer because claimant missed work December 2, 2007, December 3, 2007 and December 4, 2007. Claimant had been on FMLA since August 2007. Claimant was to call back in and ask for more time. Employer sent claimant a request for medical information in late November 2007. Claimant provided an off work excuse from her treating doctor effective September 26, 2007 removing her from work indefinitely. The off work excuse was dated December 4, 2007. Claimant did go to work on December 5, 2007 to discuss the issues with employer. Employer did not grant further leave of absence because claimant had overextended her FMLA leave. Employer made a business decision that the position should be filled rather than waiting for claimant to recover.

Employer's policy deems three no-call absences as a voluntary quit. Claimant was informed of the policy. Claimant was warned that she would be discharged if she did not return from the leave of absence in a timely fashion.

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(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.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning overextending a leave of absence. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant was absent due to illness. Claimant properly reported the medical need to be off work by a medical document requested by employer. Claimant promptly responded to the employer's request for further medical documentation by way of the report dated December 4, 2007. The absences were properly covered by a doctor's off work slip. The absences are excusable because they were due to illness and properly documented. Claimant followed the employer's instructions by obtaining the certification of health care provider. This is sufficient to give employer notice that claimant was still off work due to illness. Absenteeism due to illness is

excusable if properly reported. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated January 8, 2008, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css