

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEXANDREA L WALDBUSSER
Claimant

APPEAL NO. 11A-UI-10353-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AT&T MOBILITY SERVICES LLC
Employer

**OC: 07/03/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 27, 2011, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on August 30, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. John Henson participated in the hearing on behalf of the employer with a witness Patricia Richey.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a customer service representative from July 19, 2010 to June 15, 2011. She was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination if they received 12 attendance points.

As of June 4, 2011, the claimant had 11.75 attendance points. She had received warnings in regard to her attendance, including a final warning. The attendance points were nearly all due to legitimate illness and the absences were properly reported. The claimant had one tardy and one time when she failed to work her entire shift. On many occasions, the claimant had brought in a medical excuse, but the employer considered the absences unexcused because she did not have paid time to cover it and did not make up the hours.

The claimant was absent from work with proper notice to the employer on June 11, 2011. She was too sick to work that day. The absence was considered unexcused, which put her at 12.75 attendance points. As a result, the employer discharged the claimant on June 15, 2011.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides:

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 claimant is not subject to disqualification. Her absences were almost all for illness and were properly reported. Her final absence was due to legitimate illness and was properly reported. While the employer may have been justified in discharging the claimant based on its attendance policy, work-connected misconduct as defined by the unemployment insurance law has not been established.

DECISION:

The unemployment insurance decision dated July 27, 2011, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw