

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHEANA D BROOKS

Claimant

APPEAL NO: 11A-UI-09812-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA

Employer

OC: 02/27/11

Claimant: Appellant (5/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's July 20, 2011 determination (reference 03) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. Turkessa Hill, a human resource generalist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2010. The claimant worked as a full-time customer service representative. The employer's attendance policy allows employees eight attendance points for unexcused absences. Even though the claimant does not remember receiving this warning, her personnel file indicates she received her final written warning for attendance issues on November 29, 2011. As of November 29, the claimant had a total of eight unexcused absences and/or tardies.

In mid-January 2011, the claimant had daycare issues and initially resigned when her supervisor would not grant her some time off to resolve her daycare issues. When the claimant got her daycare issues taken care of in a couple of days, the employer allowed her to continue her employment. Hill then talked to the claimant in mid-January and told the claimant that she could not have any more unexcused absences. The claimant had more than eight attendance points in mid-January.

On February 1 the claimant worked. On her way home from work, the claimant got stuck in a snowstorm with her young children. On February 2, the claimant notified the employer she could not get out of her driveway because of snow and would not be at work. The claimant did not call or report to work on February 3. On February 4, the claimant notified the employer she was ill and unable to work. On February 6, the claimant notified the employer her daughter was

ill, so she was unable to work. On February 9, the claimant forgot she had changed her schedule to work earlier and was 16 minutes late for work.

The employer discharged the claimant on February 9 for reporting to work late when she had already been warned her job was in jeopardy if she failed to work as scheduled.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The claimant did not voluntarily quit her employment. Instead, the employer discharged the claimant on February 9, 2011.

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). The claimant knew or should have known her job was in jeopardy in mid-January 2011 when the employer allowed her to continue working after she resolved her daycare problems. At that time, Hill, a human resource representative, told the claimant she had to work her scheduled shifts or she could lose her job.

In January 2011, the claimant chose to start working earlier. On February 9, the claimant forgot she worked an earlier shift and overslept. Since the claimant had control over when she reported to work, the employer discharged her for on-going attendance issues when she reported to work late on February 9. The claimant's repeated failure to work as scheduled, before mid-January and on February 9, constitutes work-connected misconduct since her job was in jeopardy for on-going attendance issues. As of February 27, 2011, the claimant is not qualified to receive benefits.

An overpayment issue for benefits the claimant has received since February 27, 2011, will be remanded to the Claims Section to determine.

DECISION:

The representative's July 20, 2011 determination (reference 03) is modified, but the modification has no legal effect. The claimant did not voluntarily quit her employment. Instead, she was discharged for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 27, 2011. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. An issue of overpayment for benefits the claimant may have received since February 27, 2011, is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs