

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYLA L ZUBROD

Claimant

APPEAL NO. 11A-UI-02976-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

"ACC ENTERPRISES LLC

"CEDAR HEALTH

Employer

OC: 01/02/11

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

ACC Enterprises, LLC, doing business as Cedar Health, filed a timely appeal from an unemployment insurance decision dated March 8, 2011, reference 01, that allowed benefits to Kayla L. Zubrod. After due notice was issued, a telephone hearing was held April 1, 2011, with Ms. Zubrod participating. Administrator Dennis Sanvig and Environmental Director Penny Bass participated for the employer.

ISSUE:

Was the claimant discharged because of a current act of misconduct?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Kayla L. Zubrod was employed as a kitchen aide by Cedar Health from June 14, 2010 until she was discharged November 28, 2010 for poor attendance.

The final absence occurred on November 28, 2010. At approximately 3:00 p.m. Ms. Zubrod sent a text message to her direct supervisor, Penny Bass, indicating that she could not work that day. Ms. Bass did not immediately find the text message but responded when she found it. By text message Ms. Bass asked the reason for the absence. Ms. Zubrod responded that she was ill and that she would go to the doctor on the following day. Because of prior absences, Ms. Bass did not give Ms. Zubrod that opportunity. She sent a text message to Ms. Zubrod that she should not report to work any further.

Some of Ms. Zubrod's prior absences had been for illness but others were for lack of transportation or other personal reasons.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for disqualifying misconduct. It does not.

Iowa Code § 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.

The employer has the burden of proof. See Iowa Code § 96.6-2. While excessive unexcused absenteeism is misconduct, absence due to matters beyond an individual's control, such as personal illness, are considered to be excused provided the employee has properly reported the absence to the employer. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7). The employer must also establish that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). In the context of a discharge because of absenteeism, this means that the employer must establish by a preponderance of the evidence that the final absence was unexcused. The evidence does not establish this. The evidence establishes that the claimant notified the employer in advance of the absence. It also establishes that the claimant notified the employer of the reason for the absence and offered to provide medical documentation. The employer has not established that Ms. Zubrod was not, in fact, ill. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated March 8, 2011, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs