

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARY H SWEDENSKY**  
Claimant

**APPEAL NO. 10A-UI-14386-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COUNCIL BLUFFS PAYROLL COMPANY**  
Employer

**OC: 09/19/10  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Mary H. Swedensky filed a timely appeal from an unemployment insurance decision dated October 18, 2010, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held November 30, 2010 with Ms. Swedensky participating. Her former employer, Council Bluffs Payroll Company, did not respond to the hearing notice.

**ISSUE:**

Was the claimant discharged for misconduct in connection with her employment?

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Mary H. Swedensky was employed by Council Bluffs Payroll Company from September 2008 until November 29, 2009. She last worked as a lead worker. Ms. Swedensky has a heart condition. It caused her to leave work early on October 30, 2009. She spoke with the plant nurse and Joanne Peterson from human resources. She was told that she could not return to work without a doctor's release. Ms. Swedensky kept in contact with Ms. Peterson and with the plant nurse and returned with the doctor's release on November 29, 2009. She was told at that time that her employment had ended.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. As noted above, the employer did not participate in the hearing. The claimant's testimony established that she did not voluntarily leave employment and that she maintained contact with the company during her extended absence due to illness. Absence due to illness properly reported to the employer cannot constitute misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). No disqualification may be imposed.

**DECISION:**

The unemployment insurance decision dated October 18, 2010, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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