

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANN C SLATER**  
Claimant

**APPEAL NO. 07A-UI-06013-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HCM INC**  
Employer

**OC: 05/20/07 R: 01  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Ann Slater filed an appeal from a representative's decision dated June 8, 2007, reference 01, which denied benefits based on her separation from HCM, Inc. After due notice was issued, a hearing was held by telephone on July 3, 2007. Ms. Slater participated personally. The employer participated by Steve Fitzgerald, Administrator, and Norma Allen, Dietary Supervisor.

**ISSUE:**

At issue in this matter is whether Ms. Slater was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Slater began working for HCM, Inc. on December 19, 2000. She was last employed full time as a cook and dietary aide. She became separated from the employment because of her attendance.

Ms. Slater received a written warning about her attendance on October 12, 2006. The primary problem was that she was not giving the required two hour's notice of the intent to be absent. She had been late reporting to work on September 19 and had missed an in-service on September 29. She received another written warning on March 30, 2007 after she was absent without calling in on March 29. Ms. Slater was scheduled to be at work at 6:00 a.m. on May 7. She called at 6:18 a.m. to report that she would be approximately one hour late because she overslept. She was told she did not have to report as her hours had been covered. Ms. Slater did not report for work or contact the employer on May 8 and 9. She was notified of her discharge on May 15, 2007. Attendance was the sole reason for the separation.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321

N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. Tardiness in reporting to work is considered a limited absence from work.

Ms. Slater was warned about her attendance in October of 2006. At the time of the warning, there had been at least three occasions on which she had given less than the required notice. She had also been late reporting to work on one occasion. Her failure to timely report her absences constituted a substantial disregard of the standards she knew the employer expected of her. She was absent without calling in on March 29. The warning of March 30 should have been sufficient to put Ms. Slater on notice that her attendance was jeopardizing her continued employment.

In spite of the March warning, Ms. Slater intended to be late on May 7 because she overslept. Oversleeping is not reasonable grounds for missing time from work. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). She was then absent without calling in on May 8 and 9. She contended that she believed she had been fired when told on May 7 that her hours were covered. She was told this when she reported that she would be late. The administrative law judge does not believe a reasonable person would assume that the phrase, "we have your hours covered," meant termination. A reasonable person would assume that it meant the hours were covered for that day. Moreover, Ms. Slater did not confirm that she was discharged when told on May 7 that her hours were covered.

Ms. Slater's discharge was prompted by three consecutive periods of unexcused absenteeism, May 7, 8, and 9. Given her prior discipline for attendance, the administrative law judge considers this excessive. Excessive unexcused absenteeism constitutes a substantial disregard for the standards an employer has the right to expect. For the reasons cited herein, it is concluded that misconduct has been established and benefits are denied.

**DECISION:**

The representative's decision dated June 8, 2007, reference 01, is hereby affirmed. Ms. Slater was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

---

Carolyn F. Coleman  
Administrative Law Judge

---

Decision Dated and Mailed

cfc/css