

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMORITA M MUALIA**  
Claimant

**APPEAL NO. 09A-UI-15356-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WESLEY RETIREMENT SERVICES INC**  
Employer

**Original Claim: 09/13/09  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Amorita Mualia filed a timely appeal from a representative's decision dated October 5, 2009, reference 01, which denied benefits based upon her separation from Wesley Retirement Services, Inc. After due notice was issued, a telephone conference hearing was scheduled for and held on November 13, 2009. The claimant participated personally. The employer participated by Barbara Foertch, human resource manager.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: The claimant was employed by the Wesley Retirement Services from August 5, 2008, until December 8, 2008, when the claimant was discharged for failing to call in to report her impending absence. Ms. Mualia had been warned for excessive absenteeism and tardiness. The claimant had been absent or tardy on a number of occasions due to lack of child care arrangements. The claimant called in on December 8 to report her impending absence but did not call the following day. Prior to discharging the claimant, the employer checked with facility management and determined the claimant had not called in as required.

It is the claimant's position that she was absent due to inadequate child care arrangements and due to the illness of her children.

**REASONING AND CONCLUSIONS OF LAW:**

The evidence in this case is disputed. The administrative law judge, having heard the testimony of the witnesses and having considered the matter, is of the opinion that the employer has sustained its burden of proof by a preponderance of the evidence.

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

In this case, the evidence in the record established that the claimant had been warned and counseled about excessive absenteeism and tardiness. The claimant had failed to report for work and had reported late on numerous occasions due to lack of child care arrangements. The employer has a set procedure for determining whether employees have called in as required. Although the claimant called in to report her impending absence on December 8, 2008, she did not call as required the following workday and was discharged for failure to report or provide notification as required by company policy. Employees are subject to discharge if they fail to report or provide notification. The claimant had previously been warned.

The administrative law judge notes that the employer's witness testified with specificity. In contrast, Ms. Mualia's testimony lacked specificity and her account of whether she called in on December 9, 2008, varied. The administrative law judge finds the employer's witness to be more credible. Benefits are denied.

**DECISION:**

The representative's decision dated October 5, 2009, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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