

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MONICA M KELLEY
Claimant

PEARSON GOVERNMENT SOLUTIONS INC
Employer

APPEAL NO: 10A-UI-05417-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/07/10
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer appealed a department decision dated March 30, 2010, reference 01, that held she was discharged for no act of misconduct on March 8, 2010, and benefits are allowed. A telephone hearing was held on May 25, 2010. The claimant participated. Marjorie Kinsel, HR Generalist, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time CSR on January 28, 2007, and last worked for the employer on March 8, 2010. The employer issued the claimant a written warning for excessive absences on January 12, 2010. When the claimant learned her father was diagnosed with stage four Cancer, she applied for FMLA in order to care for him. The employer assured the claimant that any absences due to her father's care while her leave application was pending would not be counted against her.

The employer discharged the claimant for excessive absences on March 8, 2010. The claimant was absent from work on the Friday before with a doctor's note that she was caring for her father during a testing procedure.

REASONING AND CONCLUSIONS OF LAW:

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has failed to establish claimant committed any current act of misconduct when she was terminated for absenteeism on March 8, 2010.

When questioned during the hearing, employer could not offer the absence dates it relied upon after the January 12 warning leading to discharge on March 8, 2010. The most recent absence offered by the claimant was for an excusable reason that is not misconduct.

DECISION:

The department decision dated March 30, 2010, reference 01, is affirmed. The employer failed to establish the claimant was discharged for a current act of misconduct on March 8, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css