

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDI L YEAMANS

Claimant

APPEAL NO. 10A-UI-07002-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES INC

Employer

OC: 04/04/10

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 28, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 1, 2010. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Turkessa Newsome participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a customer service representative from October 5, 2009 to March 13, 2010. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. Under the employer's point policy, employees were subject to termination after using eight attendance points. The claimant had been warned about her attendance issues on December 31, 2009, and January 9, 2010.

The employer discharged the claimant for excessive absenteeism after she left work early on March 13, 2010, because her child was sick. She used one-half point, which caused her to use up all of her attendance points. After her final warning, the claimant had left work early due to family issues on February 1 and February 4. She had left work sick on February 22 and was absent on February 25 and 26, with no reason given. She notified the employer regarding her absences.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides that excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer. 871 IAC 24.32(8) states that 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.

No current act of work-connected misconduct has been established in this case. The claimant left work early on March 13 due for a legitimate reason with notice to her supervisor.

DECISION:

The unemployment insurance decision dated April 28, 2010, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css