

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BILLI J BECKER
Claimant

PRO RESOURCES INC
Employer

APPEAL NO. 12A-UI-10678-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/20/11
Claimant: Appellant (2)**

Section 96.5-2-A – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated August 22, 2012, reference 02, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 10, 2012. The claimant participated personally. The employer participated by Ashley Green, the corporate administrator. The record consists of the testimony of Ashley Greene; the testimony of Billi Becker; and Employer's Exhibits 1-5.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a staffing company. The claimant's first assignment began on June 18, 2012. She was assigned as a general laborer to Ashley Industrial Molding. She was a full-time employee. Her last day of work was August 1, 2012. She was terminated on August 8, 2012.

The claimant was terminated because she had three occurrences or absences within the first 90 days of employment. The claimant left early on August 1, 2012. She was absent on August 2, 2012, and August 3, 2012. The claimant was absent because a family member was in the hospital and was dying. The claimant told the employer about this situation when she was hired. She was asked to keep the employer apprised of the status.

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(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.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matters of personal responsibility, such transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7) The employer has the burden of proof to show misconduct.

There is insufficient evidence in this record for excessive unexcused absenteeism. The claimant credibly testified that she informed the employer about her family situation when she was hired. The claimant had a family member who was terminally ill. The employer told the claimant to keep the employer advised about the situation. The claimant's three absences were incurred when she left work because the family member was close to death. The employer knew why the claimant was absent. The claimant could reasonably believe that the employer would not consider these absences to be unexcused.

The employer is entitled to enforce its attendance policy. Not every violation of an attendance policy leads to disqualification from receiving unemployment insurance benefits. In this case, the claimant's absences are considered excused. The death of a family member is an excused absence under Iowa law. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated August 22, 2012, reference 02, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css