

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANNA M SIZEMORE**  
Claimant

**APPEAL NO. 13A-UI-10691-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOC – DAVENPORT INC**  
Employer

**OC: 08/25/13**  
**Claimant: Appellant (2)**

Iowa Code §96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Absenteeism  
Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 13, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on October 14, 2013. Claimant participated along with her daughter Elizabeth Sizemore. Employer participated through Kelly Ruggenberg, Human Resources Clerk. Claimant's Exhibit A was entered and received into the record.

**ISSUES:**

Was the claimant discharged due to job connected misconduct?

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a table games dealer beginning on July 23, 2007 through August 11, 2013, when she was discharged. The claimant suffered a crushed foot in a non-work-related incident on May 15, 2013. She did not work after that due to her doctor's restrictions that her employer was unwilling to accommodate. The claimant was notified on July 29, 2013 that her FMLA leave would run out on August 10 and that if she were physically unable to return to work at that time her employment could be terminated. The claimant was not released without any work restriction by August 11, 2013, thus the employer ended her employment. The claimant was released without any work restrictions by her physician on August 24, 2013. The claimant did not claim any unemployment insurance benefits until she had been released to return to work without any work restrictions by her treating physician.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(7) provides:

(7) Excessive unexcused absenteeism. 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.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The claimant was out on FMLA leave. She was not allowed to return to work until she was released without work restrictions. The claimant ran out of FMLA leave so the employer ended her employment. The employer discharged the claimant, the claimant did not voluntarily quit. Under these circumstances the administrative law judge finds the employer discharged the claimant without any job connected misconduct on the claimant's part. Benefits are allowed, provided the claimant is otherwise eligible.

The claimant is able to and available for work effective August 24, 2013, when her physician released her to return to work without any work restrictions. The claimant did not file a claim for unemployment insurance benefits until after she had been released without work restrictions. The claimant is able to and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The September 13, 2013, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs