

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAMEKA M SANDERS
Claimant

APPEAL NO. 13A-UI-08290-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CBE COMPANIES INC
Employer

OC: 06/23/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

CBE Companies, Inc. filed a timely appeal from a representative's decision dated July 15, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that the claimant was dismissed from work on June 26, 2013 for excessive absences but finding the absences were due to illness and were properly reported. After due notice was provided, a telephone hearing was held on August 20, 2013. Claimant participated. The employer participated by Mary Phillips, John Primus, Cody Engel, and Amie Scrivner. Employer's Exhibits One, Two, Three, Four, Five, Six, and Seven were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Shameka Sanders was employed by CBE Companies, Inc. from October 11, 2012 until June 26, 2013, when she was discharged for excessive absenteeism. Ms. Sanders was employed as a full-time collection associate working in the company's call center and was paid by the hour. Ms. Sanders had set working hours. The supervisor was Amie Scrivner.

Ms. Sanders was discharged after she exceeded the permissible number of attendance infraction points in the six-month period and had received a third warning by the company within a six-month rolling period in violation of company rules. Claimant was aware of the point policy and the company's three warning in six-month policy.

Ms. Sanders received a coaching regarding attendance on February 27, 2013 when she accumulated 10 infraction points. She received a second warning on April 22, 2013 when she accumulated 20 points. The claimant was discharged on June 26, 2013 when she had accumulated 30.25 points and was subject to a third warning within the six-month period from her employer.

The majority of the claimant's infraction points were accumulated as a result of long breaks and lunches, for failure to punch in or out for breaks or lunches and use of unscheduled personal time off.

The final incident that caused the claimant's discharge took place on June 26, 2013 when the claimant accumulated points after she was required to take time away from work that had not been scheduled in advance and when the claimant received infraction points that day for failure to properly scan in on two occasions. On that day Ms. Sanders was required to leave work after initially reporting because her child's daycare had called and the claimant was required to transport her daughter to the emergency room because of fever. Ms. Sanders returned to work but again was required to leave work when her daughter again unexpectedly became ill. It appears that the claimant failed to properly scan on two occasions that day because of the emergency nature of her daughter's health condition.

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(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 employer has the burden of proof in establishing job disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not always serious enough to warrant a denial of unemployment insurance benefits. Such misconduct must be “substantial.” An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

In the case at hand the final incident that caused the claimant’s job separation took place when Ms. Sanders was called unexpectedly to leave work on two occasions on June 26, 2013 due to the unexpected illness of her daughter. Claimant had been summoned by the daycare provider because claimant’s daughter was sick with a fever. Claimant quickly responded to the call and took her child to the emergency room; the claimant returned to work and was called away because the child continued to be ill and claimant needed to be with her. In addition to receiving attendance infraction points that day for using personal time off that had not been scheduled in advance for the emergencies, the claimant was also assessed infraction points because she did not properly scan in or out due to the emergency nature of the calls. The claimant’s leaving work that day for the emergencies caused her to exceed the permissible number of attendance infraction points allowable and made the claimant subject to a third warning and discharge from employment.

The Supreme Court of the State of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive, unexcused absenteeism is a form of job misconduct. The Court held that the absences must both be excessive and unexcused and that the concept includes tardiness, leaving early, etc. The Court further held, however, that absences due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer.

While it is clear that Ms. Sanders’ infractions related to excessive break and lunch times and the evidence establishes that the claimant had been properly warned, the final infractions that caused the claimant’s discharge due to the illness of her child were properly reported. As such, those attendance infractions are deemed “excused” and the Supreme Court’s ruling in Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) cannot serve to disqualify the claimant from the receipt of unemployment insurance benefits.

While the decision to terminate Ms. Sanders may have been a sound management decision, the final event that caused the claimant’s discharge took place under non disqualifying conditions, absence due to illness that was properly reported. For these reasons the administrative law

judge concludes the claimant was discharged for reasons that are non disqualifying under the provisions of the Employment Security Law. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated July 15, 2013, reference 01, is affirmed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs