

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BELINDA Y MILLER
Claimant

APPEAL NO. 08A-UI-06471-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 06/15/08 R: 03
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The University of Iowa (UI) filed an appeal from a representative's decision dated July 14, 2008, reference 01, which held that no disqualification would be imposed regarding Belinda Miller's separation from employment. After due notice was issued, a hearing was held by telephone on August 8, 2008. Ms. Miller participated personally. The employer participated by Shannon Bartlett, Human Resources Manager, and Fred Kurt, Manager.

ISSUE:

At issue in this matter is whether Ms. Miller was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Miller began working for UI on September 7, 2000 and was last employed full time as a food service worker. She was discharged from the employment because of attendance issues.

Ms. Miller received a written warning on March 27, 2007 because of absences on March 8 and 9. She called on March 8 to report that she had a doctor's appointment that morning. She did not report to work after the appointment. She did not report for work or call in on March 9. Ms. Miller received a one-day suspension on September 6, 2007 due to absences on May 8, 9, and 10. She failed to provide requested medical documentation for the absences. The absences preceded the date she was to have surgery and she was experiencing too much pain to continue working until the surgery. Ms. Miller was suspended from work for three days on October 17, 2007 because she did not submit medical documentation in a timely manner. She was absent October 3, 4, 5, 8, and 9. She provided a doctor's statement on October 9 and returned to work on October 10. The employer expected the medical documentation on the first day of illness. Ms. Miller was hospitalized and unable to provide the documentation prior to October 9.

Ms. Miller received a five-day suspension on November 1, 2007 because she was absent on October 29. She had asked for permission to have the day off but her request was denied. She did not report for work or call in on October 29. The decision to discharge Ms. Miller was prompted by her absences of May 10 and 11. The employer received a doctor's statement on May 12 that excused her from work from May 12 through May 17. It did not cover May 10 and 11. The employer began a shut-down on May 17 with work to resume on June 8.

The employer sent a letter to Ms. Miller on May 27 advising that she would need a release from her doctor in order to return to work after the shut-down. She was told the release would be needed at least two days before she intended to return. Because of flooding in the area and because she had moved, she did not receive the letter until June 5. Ms. Miller spoke to the employer on June 6 to advise that she had just received the release form the employer sent her. Her supervisor told her she could not return to work until she had the release signed. A duplicate of the form was faxed to the doctor on June 9 and it was returned on June 10. Ms. Miller returned to work on June 10.

The employer met with Ms. Miller on June 11 regarding her absences of May 10 and 11. Because she had not presented medical documentation of the need to be absent on those dates, she was notified of her discharge on June 17, 2008.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The disqualification must be based on a current act of misconduct. See 871 IAC 24.32(8). The decision to discharge Ms. Miller was prompted by her failure to present medical documentation of the need to be absent on May 10 and 11 but she was not discharged until June 17. Ms. Miller was not at work between May 9 and May 17, when the shut-down began. Therefore, she was not available to be notified of her discharge during those dates. However, she returned to work on June 10 but still was not discharged until a week later. For the above reasons, the administrative law judge concludes that the separation was not predicated on a current act of misconduct.

Even if the administrative law judge were to conclude that the discharge was based on a current act, there would still be no basis for disqualification. The employer did not receive any medical statement indicating that Ms. Miller needed to be off work May 10 and May 11. The doctor did verify the need to be absent May 12 through May 17. The administrative law judge is satisfied that the absences of May 10 and 11 were part of the spell of illness for which there was medical documentation. It appears from the evidence that Ms. Miller substantially complied with the employer's request for medical documentation for her absences in the past. She did not always provide the documentation on the first day of absence. An employee is not always able to control when medical documentation can be made available as she is at the mercy of the medical providers as to when reports will be furnished.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that deliberate and intentional misconduct has not been established. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated July 14, 2008, reference 01, is hereby affirmed. Ms. Miller was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css