

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TARA J SHANNON**  
Claimant

**APPEAL NO. 07A-UI-10958-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALEGENT HEALTH**  
Employer

**OC: 10/28/07 R: 01  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Tara Shannon filed an appeal from a representative's decision dated November 16, 2007, reference 01, which denied benefits based on her separation from Alegent Health. After due notice was issued, a hearing was held by telephone on December 12, 2007. Ms. Shannon participated personally. The employer participated by Nancy Wallace, Operations Leader, and Brian Cooley, Operations Director. The employer was represented by Tom Kuiper of Talx Corporation. Exhibits One and Two were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Shannon 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. Shannon was employed by Alegent Health from April 23 until October 11, 2007 as a full-time unit clerk and nurse's aide. Her last day of work was September 18, 2007. Thereafter, she called each work day to report that she would be absent. She cited medical problems as one reason for being absent. She also cited personal family problems as a reason.

Ms. Shannon was living with her mother but was asked to leave at the end of September of 2007. She went to stay with a friend in Omaha but did not have a car to get to and from work. She did not investigate the possibility of public transportation. Ms. Shannon's grandmother in Mason City, Iowa, was recovering from a stroke after September 18. She sometimes went to visit her grandmother or to assist her grandfather on weekends. She was scheduled to work on alternate weekends.

Ms. Shannon had received one verbal warning and two written warnings concerning her attendance. She knew that her continued employment with Alegent Health was in jeopardy because of her attendance. The employer met with her on October 11 and gave her the

opportunity to resign rather than be discharged. She completed the resignation on October 11. Attendance was the sole reason the employer intended to discharge her.

#### **REASONING AND CONCLUSIONS OF LAW:**

Where an individual resigns after being given the choice of resigning or being discharged, the resignation is not considered a voluntary quit. See 871 IAC 24.26(21). Therefore, Ms. Shannon's separation is considered a discharge. 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). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

The administrative law judge concludes that all of Ms. Shannon's absences after September 18 are unexcused. The evidence failed to establish to the satisfaction of the administrative law judge that any of the absences were due to medical issues. Although Ms. Shannon has a history of infections, it does not appear that she suffered from any infection after September 18. She indicated her doctor usually gives her an excuse to remain off work for a few days when she experiences an infection. Had she seen her doctor after September 18, she should still have any excuse she was given since she did not return to work after that date. Ms. Shannon could not recall whether she had any medical issues after September 18.

Some of Ms. Shannon's absences after September 18 were due to the fact that she was no longer in the home she shared with her mother. During that time, she was living in Omaha and her job was in Council Bluffs. She did not have her own transportation to get to and from work. Absences caused by matters of purely personal responsibility, such as transportation, are not excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). It appears that Ms. Shannon missed some weekend work after September 18 because she was visiting her grandmother in Mason City. Since others were present with the grandmother, it does not appear that Ms. Shannon was necessary to provide care. The fact that she wanted to visit with her grandmother did not constitute good cause for missing work. Since she did not visit with her grandmother every weekend, she could have visited with her on the weekends she was not scheduled to work. Her absences from weekend work are unexcused as they were for personal reasons.

The evidence failed to establish that Ms. Shannon had good cause for being absent from work after September 18. She had been amply warned that her attendance was a problem and might result in her discharge from the employment. Ms. Shannon's absence of over three weeks starting September 18, 2007 is sufficient to establish excessive unexcused absenteeism, which is substantial disregard of the standards the employer had the right to expect. For the reasons cited herein, it is concluded that disqualifying misconduct has been established. Accordingly, benefits are denied.

#### **DECISION:**

The representative's decision dated November 16, 2007, reference 01, is hereby affirmed. Ms. Shannon was discharged for misconduct in connection with her employment. Benefits are

withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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