

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONISHA Y CHEATOM
Claimant

APPEAL NO. 11A-UI-03904-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE CBE GROUP INC
Employer

OC: 02/13/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated March 21, 2011, reference 02, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on April 19, 2011. Claimant participated personally. The employer participated by Cindy Gade, Director of Operations, and Toni Babcoc, Human Resource Manager.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Donisha Cheatom was employed by The CBE Group, Inc. from November 29, 2010 until February 18, 2011 when she was discharged for exceeding the permissible number of absences under the company's attendance policy. Ms. Cheatom was employed as a full-time collector and was paid by the hour.

Ms. Cheatom was discharged when she exceeded the permissible number of attendance infractions allowed under the company's "no fault" attendance policy. Under the policy employees are subject to discharge if they accumulate 50 attendance points within a specified period.

The final occurrence that caused the claimant's discharge took place when the employer believed that Ms. Cheatom had not provided adequate notification of her absence on February 17, 2011. Ms. Cheatom had called the employer to report that she would be absent on February 14, 15 and 16 when calling in to report her absence for February 16, the claimant indicated that she had been prescribed bed rest by her physician due to her pregnancy and additional health concerns. The claimant, therefore, did not call in on the morning of February 17 as she believed that she had provided notification the day before. Ms. Cheatom's

doctor had verified her need to be absent by providing doctors notes to the claimant covering the period of February 13 through February 15, 2011 and February 15, through February 18, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code § 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.

In this matter the evidence in the record establishes that Ms. Cheatom was aware of the company's attendance policy and had been warned prior to being discharged. The claimant, however, was unable to report for scheduled work due to a verified medical reason on February 14, 15 and 16, 17 and 18, 2011. The claimant had called in each day between

February 14 and 16 and on February 16 had reported that her doctor had advised additional bed rest and that the claimant would not be able to report to work the following day. The claimant was reasonable in her belief that the notification provided would cover February 17, 2011. When the claimant called in on the 18th to report that she was ill but that she hoped to be available for weekend work, she was notified that she was discharged.

While the decision to terminate Ms. Cheatom may have been a sound decision from a management viewpoint, the evidence in the record does not establish intentional, disqualifying misconduct at the time of separation. The claimant was reasonable in her belief that she had provided adequate notification to the employer of her impending absence. The absence was for illness and thus was an excusable reason to be absent.

The Iowa Supreme Court 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 misconduct and that the concept included tardiness, leaving early, etc. The Court further held, however, that absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 21, 2011, reference 02, is reversed. Claimant was discharged for no disqualifying reason. 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