

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OLUCHI B OJINNAKA
Claimant

APPEAL NO. 07A-UI-05270-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**COUNCIL OF SEXUAL ASSAULT AND
DOMESTIC VIOLENCE**
Employer

**OC: 04/29/07 R: 01
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Oluchi Ojinnaka, filed an appeal from a decision dated May 21, 2007, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on June 25, 2007. The claimant participated on her own behalf. The employer, Council on Sexual Assault and Domestic Violence (CSA), participated by Executive Director Margaret Sanders and Associate Director Becky Carlson .

ISSUE:

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

FINDINGS OF FACT:

Oluchi Ojinnaka was employed by CSA from November 13, 2006 until May 1, 2007, as a full-time crisis line coordinator. On March 6, 2007, Associate Director Becky Carlson and Executive Director Margaret Sanders met with the claimant to discuss some concerns about her performance. She had an excessive number of absences and tardies during her period of employment. In addition, she had attended a conference which included other staff as well as community members and she had made negative statements about the employer which prompted negative speculation about the agency from the community members.

The claimant was advised her performance would be reviewed later and on May 1, 2007, the employer met with her again. During that time she had been absent four times but that was with the prior approval of the employer. However, she had been tardy four times as well, ranging from 20 minutes to 90 minutes late to work, due to oversleeping and transportation problems. She did not report the tardies due to transportation problems because she no longer had a cell phone and did not want to walk back to her apartment to use the land line when she found her car would not start.

On April 30, 2007, the claimant had received two phone calls from a woman and did not document the calls in the proper manner, even though the woman reported being assaulted by another woman involved in her domestic situation. Instead the claimant had called a worker in another part of the facility because she did not want to walk over to the shelter, and anticipated the other worker would do the necessary documentation. This is not in accordance with the employer's procedures for reporting abuse situations from the crisis line. The claimant was discharged by Ms. Carlson and Ms. Sanders at the end of that meeting.

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.

The claimant had been advised her job was in jeopardy as a result of her attendance and poor work performance. After the warning she was absent four more days but these cannot be counted against her as the employer gave her prior approval to be absent. However, the tardies were not approved in advance and were due to oversleeping and transportation problems, which are not considered excused. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984).

The claimant also failed to follow the correct procedures when documenting calls made to the crisis line. If the calls are not properly documented then workers on other shifts would not be able to provide the correct assistance if the person called in later. Her assumption that another worker would do her work for her by documenting the call is not reasonable. The record

establishes the claimant was discharged for conduct not in the best interests of the employer and she is disqualified.

DECISION:

The representative's decision of May 21, 2007, reference 01, is affirmed. Oluchi Ojinnaka is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs