IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

AKIRA T CLEMENT
1129 – 11TH ST #5-201
WEST DES MOINES IA 50265

DILLARD DEPARTMENT STORES INC
ATTN MS BILLIE TREAT
1600 CANTRELL RD
LITTLE ROCK AR 72201-1110

Appeal Number: 05A-UI-01293-AT
OC: 01-02-05   R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the *Employment Appeal Board, 4th Floor— Lucas Building, Des Moines, Iowa 50319*.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY
1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Dillard Department Stores, Inc. filed a timely appeal from an unemployment insurance decision dated January 25, 2005, reference 01, which allowed benefits to Akira Clement. After due notice was issued a telephone hearing was held February 23, 2005 with Ms. Clement participating. Store Manager David Markoff participated for the employer. Employer Exhibit One was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Akira T. Clement was employed by Dillard Department Stores, Inc. as a sales associate from July 14, 2004 until she was discharged December 28, 2004 for unacceptable attendance. The final incident leading to discharge occurred on December 24, 2004. Ms. Clement left work early because of illness after notifying her supervisor. In compliance with company policy, she returned to work on December 26, 2004 with a doctor's excuse. She was discharged two days later by Assistant Store Manager Jennifer McKenzie for not working her full shift on Christmas Eve. Ms. Clement had been absent on several prior occasions without providing a doctor's excuse. She had also been tardy on several occasions during her employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that Ms. Clement was discharged for disqualifying misconduct. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). While excessive unexcused absenteeism is misconduct, absence due to illness properly reported to the employer cannot be held against an employee for unemployment insurance purposes. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7).

The evidence before the administrative law judge establishes that the final incident was Ms. Clement's early departure due to illness on December 24, 2004. The evidence establishes both that she notified her supervisor before leaving and that she returned for her next shift with medical documentation of her illness. The final incident was not an act of misconduct under Iowa law. Therefore, no disqualification may be imposed even though prior absences and tardiness were unexcused.

DECISION:

The unemployment insurance decision dated January 25, 2005, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

sc/tjc