

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

SHARON K MINNICH
612 W 13TH ST
DAVENPORT IA 52803

APAC CUSTOMER SERVICES OF IOWA
C/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 01A-UI-09387-DWT
OC: 07/25/04 R: 04
Claimant: Appellant (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 are 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:

Sharon K. Minnich (claimant) appealed a representative's August 24, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of APAC Customer Services of Iowa LLC (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 22, 2004. The claimant participated in the hearing. Turkessa Hill, the human resource coordinator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 22, 2001. The claimant worked as a full-time customer service representative. Her supervisor was Amy Allison. The claimant understood the employer's attendance policy that an employee could be discharged after accumulating four or more attendance points in a rolling 60-day time frame.

The claimant has had attendance problems during her employment. Prior to July 22, 2004, the claimant was able to report to work as scheduled after receiving a final written warning so attendance points rolled off and her job was not in jeopardy. Most recently, the employer gave the claimant a verbal written warning on June 24 for accumulating 1.5 attendance points. On June 30, the claimant received a written warning for her June 28 absence and accumulating 2.5 attendance points. On July 8 the claimant received a final written warning after she was absent from work on July 7 and accumulated 3.5 points. The claimant understood the employer would discharge an employee if the employee had another unexcused absence problems within 60 days of receiving a final written warning.

The claimant was ill and left work early on July 12. She did not return to work until July 17. The claimant provided the employer with a doctor's statement verifying she had been ill and unable to work July 12 through 16. The employer only assessed her one attendance point and did not discharge her because she had been unable to work due to an illness.

On July 22, the claimant was scheduled to work at 11:30 a.m. The claimant had problems getting to sleep the night before. The claimant did not hear her alarm clock and woke up between 11:00 and 11:30 a.m. Although it only takes the claimant 20 minutes to get work, she did not get to the employer's parking lot until 1:00 p.m. When the claimant got to the employer's parking lot she called the employer for the first time on July 22 and asked her supervisor if she still had a job. After the claimant reported to work, the employer discharged her for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant understood her job was in jeopardy for attendance problems prior to July 22, 2004. The claimant overslept on July 22. Instead of getting to work as quickly as she could,

the claimant did not report to work until around 1:00 p.m. even though she had gotten up between 11:00 and 11:30 a.m. In accordance with the claimant's testimony, she arrived at work at least an hour later than she could have reported to work. The claimant's actions on July 22 do not establish that she took the necessary steps to preserve her employment either when she had problems falling asleep or after she woke up. The claimant's excessive absenteeism amounts to an intentional and substantial disregard of the claimant's duty to work as scheduled. The employer discharged the claimant for reasons constituting work-connected misconduct. As of July 25, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 24, 2004 decision (reference 01) is affirmed. The employer discharge the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 25, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/kjf