

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CALISTA C STOUT**  
Claimant

**APPEAL NO. 10A-UI-10154-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MID PRAIRIE COMMUNITY SCHOOL DIST**  
Employer

**OC: 06/13/10**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Mid Prairie Community School District (employer) appealed a representative's July 12, 2010 decision (reference 01) that concluded Calista C. Stout (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 3, 2010. The claimant participated in the hearing. Cindy Steege appeared on the employer's behalf and presented testimony from two other witnesses, Jim Cayton and Evan Parrott. 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:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on August 18, 2009. She worked full-time as a preschool associate in the employer's off-site preschool program. Her last day of work was April 23, 2010. The employer discharged her on that date. The reason asserted for the discharge was absenteeism without leave.

The claimant had been absent from March 15 through April 12 due to a back injury; she had properly logged into the employer's attendance system and reported the absences as sick time. The employer sent the claimant FMLA (Family Medical Leave) paperwork on March 26, with a deadline of April 2. The claimant had difficulty in getting the paperwork completed, as she had been seen by three different doctors, and while the claimant made repeated contact with the various doctors' offices, none of them were willing to complete information that referred to periods when the claimant was being treated by the other two doctors. While at least one of the doctors had completed a portion of the paperwork, by April 22, the claimant had been unable to secure completion of all parts of the paperwork. As a result, the claimant's absence was treated as an absence without leave, and she was discharged.

## REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. 871 IAC 24.32(7); Cosper, supra; Gaborit v. Employment Appeal Board, 734 N.W.2d 554 (Iowa App. 2007) (doctor's note to cover absence not necessary for absence claimed as due to illness to be "excused.")

The employer treated the claimant's absence from March 15 through April 12 as unexcused because by April 22 she had not provided the completed FMLA paperwork. However, an absence for illness is not only treated excused for purposes of unemployment insurance eligibly if it is covered by FMLA. The FMLA provisions were enacted to be an employee protection and shield, not a sword to be used by an employer as a weapon against the employee. While the claimant's failure to file her FMLA paperwork might be a technical ground for denying the claimant the protection FMLA is otherwise intended to provide, it does not mean that the underlying absence was unexcused. The employer does not contest the claimant's assertion that the absence of March 15 through April 12 was due to a bona fide medical issue. Because the absence was related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred that establishes work-connected misconduct and no disqualification is imposed. The employer has failed to meet its burden to

establish misconduct. Cosper, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's July 12, 2010 decision (reference 01) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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