

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THERESA L EVANS**  
Claimant

**APPEAL NO. 08A-UI-00911-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GRANDVIEW HEIGHTS INC**  
Employer

**OC: 01/06/08 R: 01  
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated January 25, 2007, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on February 11, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Craig Koonce participated in the hearing on behalf of the employer with a witness, Lori Kramer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked for the employer as a certified nursing assistant from October 4, 2007, to January 3, 2008. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to find their own replacement and notify the employer two hours before the start of their shift if they were not able to work as scheduled. The claimant had been counseled regarding excessive unexcused absenteeism in October 2007.

From October 4, 2007, to January 3, 2008, the claimant was late for work 16 times. She was also absent on the following dates and for the following reasons: October 8 (in jail); October 11 (no reason given); October 25 (son in car accident); October 27 (no reason given); October 29 (ill); November 19 (ill); December 3, 4, 5 (mouth surgery); December 11 (no reason given); and December 27 (no reason given).

The claimant was scheduled to work on January 1 and 2, 2008. She was absent on each day because of a car accident involving another son. The claimant did call in on either day as required by the employer's policy.

The employer discharged the claimant for excessive unexcused absenteeism on January 3, 2008.

## REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

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.

The claimant's excessive unexcused absenteeism was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. I do not believe the claimant notified the employer about her absences on January 1 and 2. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated January 25, 2007, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css