

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VALERIE D SPELTZ**  
Claimant

**APPEAL NO. 07A-UI-07867-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ROCKWELL COLLINS INC**  
Employer

**OC: 07/15/07 R: 03  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Valerie Speltz (claimant) appealed a representative's August 13, 2007 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with Rockwell Collins (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 5, 2007. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 8, 1992, as a full-time senior assembler. The claimant was under a doctor's care who restricted her work duties. When the employer did not follow those restrictions the claimant became anxious. She properly reported her absence to the employer on July 16, 2007, and saw her physician. She was diagnosed with Irritable Bowel Syndrome. The claimant was still not feeling well on July 17, 2007, and properly reported her absence. Later on July 17, 2007, the claimant's physician requested that laboratory work be done on July 18, 2007. On July 18, 2007, the claimant properly notified the employer of her absence and that she was going to the lab due to her illness even though she was feeling better. The claimant took a turn for the worse and properly reported her absence due to illness again on July 19, 2007. The claimant had requested to use vacation time for her illness.

In the mid-morning of July 19, 2007, the employer told the claimant that she was separated from employment for failure to appear for work for three days. The claimant had a doctor's excuse for July 16, 17 and 18, 2007.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absenteeism was a properly reported illness which occurred on July 16, 17, 18 and 19, 2007. The claimant's absence does not amount to job misconduct because it was properly reported. The employer has failed to provide any evidence of willful and deliberate misconduct which

would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

**DECISION:**

The representative's August 13, 2007 decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/css