

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHEMIA C WISE
Claimant

APPEAL NO. 11A-UI-08807-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LISA ETNYRE
ABCM CORPORATION
Employer

OC: 05/08/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated June 21, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on July 27, 2011. The claimant participated personally. Although duly notified, the employer did not respond to the notice of hearing and did not participate.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Shemia Wise was employed by ABCM Corporation, doing business as Harmony House Health Care Center, from September 15, 2010 until May 9, 2011 when she was discharged from work. Ms. Wise worked as a part-time dietary aide and was paid by the hour. Her immediate supervisor was Lynnette (last name unknown).

Ms. Wise was discharged after she was unable to report for scheduled for work on May 9, 2011. Due to unexpected transportation problems the claimant was unable to return on May 9, 2011 from the state of Michigan where she was visiting a relative who had suffered a stroke. The claimant called her immediate supervisor prior to the beginning of the work shift and received authorization from her supervisor to be absent that day. Subsequently when the claimant attempted to report for work she was informed that she had been discharged from employment.

Ms. Wise had received a warning regarding attendance on April 18, 2011, although she had been absent for medical reasons and had provided a doctor's note to the employer.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6.2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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 upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

Allegations of misconduct without additional evidence shall not be sufficient to result in a disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In this matter the claimant testified that she had been previously warned for being absent although she had provided a doctor's note and had been specifically instructed by the company nurse not to work because of illness. The claimant further testified that on May 9, 2011 she was unexpectedly unable to report for work due to transportation problems while out of state. The claimant testified that she spoke with her immediate supervisor prior to the beginning of her work shift and her absence from work that day was "okayed" by her supervisor because of these circumstances. Although the claimant believed that she had been authorized to be absent that day, she was nonetheless discharged from employment when she attempted to report for work the following day.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for these reasons but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Ms. Wise may have been a sound decision from a management viewpoint, the evidence in the record does not establish sufficient intentional misconduct on the part of the claimant to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant is otherwise eligible.

For the reasons stated herein the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated June 21, 2011, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css