

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER D KRIEGER
Claimant

APPEAL NO. 09A-UI-17424-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FMC/MARC INC
ARBIES
Employer

OC: 10/18/09
Claimant: Respondent (2)

Section 96.5(2)a – Discharged

STATEMENT OF THE CASE:

The employer, Arbies, filed an appeal from a decision dated November 10, 2009, reference 01. The decision allowed benefits to the claimant, Jennifer Krieger. After due notice was issued, a hearing was held by telephone conference call on December 28, 2009. The claimant participated on her own behalf. The employer participated by Unit Director Jessi Kirkhart and was represented by TALX in the person of Jennifer Coe. Exhibits One and Two were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Jennifer Krieger was employed by Arbies from August 19, 2009 until October 19, 2009 as a part-time crew member. She had received about six verbal warnings from Unit Director Jessi Kirkhart for tardiness and absenteeism. The first formal, documented verbal warning was issued on October 8, 2009, because the claimant had not called in absent prior to the start of her shift as required on October 4, 2009.

Ms. Krieger was 40 minutes late to work on October 18, 2009, because she said her clothes were wet. On October 19, 2009, she was scheduled to work from noon to 2:00 p.m. but was no-call/no-show to work. A little after 2:00 p.m. she called Ms. Kirkhart to say she had been in Burlington, Iowa, with her mother who had been admitted into the hospital late the night before. She did not call in prior to the start of her shift because she left her phone at home in Ottumwa, Iowa, when she left town. Ms. Krieger does have relatives in Burlington, Iowa, but did not ask to use their phones to call her employer that morning.

The employer told the claimant she would have to provide documentation from the doctor or the hospital that her mother was hospitalized and that Ms. Krieger had been with her the entire

night. The claimant refused. Ms. Kirkhart said if she did not provide the documentation she would be fired and the claimant again refused, then hung up.

Jennifer Krieger filed a claim for unemployment benefits with an effective date of October 18, 2009. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

REASONING AND CONCLUSIONS OF 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 had been advised her job was in jeopardy as a result of her absenteeism. The final incidents were a tardy due to "wet clothes" and a no-call/no-show on two successive days. Why the claimant did not make adequate arrangements the night before to make sure her clothes were dry in time to go to work is not clear but this is not an acceptable reason for being late to work.

The no-call/no-show to work the next is also unexplained. Although the claimant may indeed have been in another town while her mother was in the hospital, there were ample arrangements she could have made to call the employer prior to the start of her shift and say she would be absent. She failed to take any action at all to properly notify the employer she would not be in to work that day.

The employer was not unreasonable in requesting documentation of the reason for her absence. The vehemence with which the claimant refused to provide a doctor's excuse calls into question whether there was, in fact, any medical situation with her mother. No such documentation was presented at the appeal hearing to support her testimony.

The record establishes the claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of November 10, 2009, reference 01, is reversed. Jennifer Krieger is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css