

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BOBBI J THEIN**  
Claimant

**APPEAL NO: 09A-UI-17983-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EMPLOYER'S SERVICE BUREAU INC**  
Employer

**OC: 11/01/09**  
**Claimant: Appellant (5)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a representative's November 25, 2009 decision (reference 01) that concluded she was not qualified to receive benefits, and the employer's account was exempt from charge because the claimant voluntarily quit her employment without good cause attributable to the employer. A hearing was held on January 4, 2010. The claimant participated in the hearing. John Rausenberger, the vice president, appeared on the employer's behalf. 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:**

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in November 2008. The employer is a contract firm for Nestlé's Purina Plant. The claimant worked at Nestlé's Purina Plant as a production employee. Employees working for this client do not necessarily work every day. When employees worked, they looked to see if they were on the list to work the next day. The claimant usually worked every day and was not off work more three or more days in a week.

The claimant had an attendance issue before October 13, but the employer had not given her any written warning for her attendance. The claimant worked as scheduled on October 13. The claimant did not call or report to work on October 14 and 15 as scheduled. The claimant was not scheduled to work on October 16, 2009.

The claimant called and reported she was unable to work on October 19, 2009. The employer has no record the claimant called off on October 20, 21 or 22. The claimant called the employer's office on October 23, 2009. She then learned she no longer worked for the employer because the employer discharged her failing to call or report to work on October 20, 21 and 22. The claimant told the employer she had called and would provide a copy of her

phone records to prove she had called. The claimant did not provide any supporting information to verify she had called the employer.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The evidence establishes the employer initiated the employment separation and discharged the claimant.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a). The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant testified she went to Dubuque on October 16. The claimant's children live with her mother in Dubuque and she went there for family issues. When the claimant decided to remain in Dubuque because of a health issue, she contacted the employer to report she was unable to work on October 19, 2009. Both parties agree this call took place.

The claimant asserted she called the employer on Tuesday, October 20, and left a message that she was not able to work. The employer has no record of this call. The claimant returned to Clinton on Tuesday night. The claimant testified she also called on Wednesday and asked someone to call her to let her know if she was on the list to work. The employer did not call the claimant and had no record she called on Thursday. On Thursday, October 22, the claimant asserted she called about 9:00 a.m. even though her shifts start by 6:00 a.m. The claimant lives about seven minutes from work. She did not go to the plant or personally talk to the employer before October 23 when the employer did not call her back.

On October 23 when she called, she talked to Rausenberger to ask why she was not on list to work. He then told her she had been discharged because she had not called or reported work since October 19, 2009. The claimant's failure to report to work since October 13 constitutes excessive unexcused absenteeism. After the claimant returned to Clinton on October 20, she failed to take reasonable steps to maintain her employment. If the claimant called and left messages as she asserted, she failed to take reasonable steps to maintain her employment. Since she lived less than ten minutes from the plant, she could have reported to work on October 21 and 22. If she was not scheduled to work, she then could have talked to someone instead of leaving a message. Ultimately, when the claimant returned to Clinton, she could have reported to work on October 21 and 22, but did not. Since the claimant did not take reasonable steps to maintain her employment, her credibility about calling the employer each day is at issue.

Based on a preponderance of the credible evidence, the facts establish the employer discharged the claimant for excessive unexcused absenteeism, which constitutes

work-connected misconduct. Therefore, as of November 1, 2009, the claimant is not qualified to receive benefits.

**DECISION:**

The representative's November 25, 2009 decision (reference 01) is modified. The modification has no legal consequence. The claimant did not voluntarily quit her employment. Instead, the employer discharged for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 1, 2009. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css