

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY RUTTKAY
Claimant

APPEAL NO. 11A-UI-09117-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MID-STEP SERVICES INC
Employer

**OC: 06/12/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Ashley Ruttkay filed a timely appeal from a representative's decision dated July 6, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on August 8, 2011. Claimant participated personally. The employer participated by Ms. Jan Hackett, Human Resource Director.

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: Ashley Ruttkay was employed by Mid-Step Services as a full-time residential living assistant from April 6, 2009 until June 9, 2011 when she was discharged for excessive absenteeism. The claimant was employed on a full-time basis. Her immediate supervisor was Rose Jacobson.

Mr. Ruttkay was discharged from Mid-Step Services after she failed to attend mandatory training on June 8, 2011 and failed to inform the employer in advance of her impending absence. The claimant overslept and did not awake until approximately 3:00 p.m. that afternoon. Ms. Ruttkay did not call the employer or attempt to report at that time. The claimant was discharged when she reported to work the following day.

Ms. Ruttkay received a number of warning about excessive unexcused absences from her employer. The claimant's most recent warning took place on May 10, 2011. The claimant had been previously warned and or suspended for unexcused absences on five occasions.

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.

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.

In this matter the claimant was discharged after she had been repeatedly warned, counseled and suspended for unexcused absenteeism and failed to report for a mandatory training on June 8, 2011 and did not provide notice of her impending absence to the employer as required by policy.

The Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of job misconduct. The Court held that the absences must be both excessive and unexcused and that the concept includes tardiness, leaving early, etcetera. The Supreme Court in the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984) held that absence due to matter of "personal responsibility, e.g. transportation problems and oversleeping, are considered unexcused.

Based upon the application of the facts to the law in this matter, the administrative law judge concludes that the claimant's discharge took place under disqualifying conditions. Unemployment benefits are withheld.

DECISION:

The representative's decision dated July 6, 2011, reference 01, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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