

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DESTINEE A PROUGH**  
Claimant

**APPEAL NO. 12A-UI-10822-S**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACE INTERNATIONAL INC**  
Employer

**OC: 10/09/11  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness  
871 IAC 24.32(8) – Current Act of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated August 30, 2012, reference 05, that held she was discharged for excessive unexcused absenteeism on July 13, 2012, and which denied benefits. A hearing was held in Des Moines, Iowa, on October 9, 2012. The claimant participated along with her mother, Eloise Prough. Kim Weaver, GM, participated for the employer. Employer Exhibit 1 and Claimant Exhibits A, B were received as evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant worked as a part-time crew member from October 8, 2010 to July 16, 2012. The employer issued claimant eight counseling reports regarding tardiness during 2012. The July 3 counseling states if she were late again, she would be suspended for one week, and after suspension she would be terminated from employment.

Claimant left her work shift early on July 13 due to a reported health issue. Her Eldora doctor called stating she might have a contagious infection and he needed to see her right away for testing. She reported this information to the GM when requesting to leave work. She was told she needed to provide a doctor's excuse to return to work.

Claimant tested positive for a bacterial infection at the doctor's office on July 13 and she was excused from work due to the contagious nature of her condition. She did not report for work on July 14 or 15 because she believed she was excused from work until released by her doctor.

On July 16 claimant was seen by her doctor, who excused her from work to that date, and she called the GM the following day to report she could go back to work. The GM told claimant she was discharged for her recent absences in light of the prior counseling reports.

**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(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.

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 administrative law judge concludes that the employer failed to establish a current act of misconduct in the discharge of the claimant on July 17, 2012, for excessive "unexcused" absenteeism.

The employer did establish a pattern of misconduct due to excessive unexcused tardiness through July 3. The claimant received doctor excuses to cover her absenteeism from July 13 due to a contagious bacterial infection, and she reasonably believed when leaving employment she could not return to work until she had been released. The employer approved the reason claimant left work on July 13 and failed to provide her the opportunity to provide medical excuses to cover the absenteeism period. No current act(s) of misconduct is established.

**DECISION:**

The decision of the representative dated August 30, 2012, reference 01, is reversed. The claimant was not discharged for a current act of misconduct in connection with employment on July 17, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw