

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELLY N HERMAN**  
Claimant

**APPEAL NO. 12A-UI-00977-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DM SERVICES INC**  
Employer

**OC: 12/18/11  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated January 19, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 21, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Monica Rodriguez participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full-time for the employer as a credit specialist from October 20, 2008, to December 13, 2011. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled.

The claimant was placed on 90 days' probation on September 9, 2011, for having an absence percentage of 15.6. She was informed that she would be terminated if she did not reduce her absence percentage to under 15 percent.

The claimant's absence percentage as of December 7, 2011, was 17.88 percent. Her absences were all properly reported. Nearly all of her absences were due to the claimant or her child being sick. The final absences were on November 20 and 21, when she was ill, and on November 30, when the claimant was late because her babysitter had a doctor's appointment that morning but the claimant was not informed about it until the evening before and she could not find anyone else to watch her child.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant based on her not meeting attendance standards, work-connected misconduct as defined by the unemployment insurance law has not been established. 871 IAC 24.32(7) provides: 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. In this case, the claimant has shown reasonable grounds for her final absences and that she properly reported her absences. No willful and substantial misconduct has been proven in this case.

**DECISION:**

The unemployment insurance decision dated January 19, 2012, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw