

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHELLY M HOYT**  
Claimant

**G M R I INC**  
Employer

**APPEAL NO. 10A-UI-00924-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/13/09**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated January 8, 2010, reference 01, that held the claimant was not discharged for excessive unexcused absenteeism on November 29, 2009, and benefits are allowed. A telephone hearing was held on February 25, 2010. The claimant participated. Jim Beltz, General Manager, participated for the employer.

**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 hostess from October 22, 2007 to November 29, 2009. The claimant received a final written warning for a no-call, no-show to work on November 7. The claimant mis-read her work schedule and she failed to note she was to work that day.

The claimant was injured in a fall on November 13. Shortly after this incident, she became ill with the flu. The claimant was off work due to properly reported illness from November 29 to December 10. The claimant called in each day to report she would miss work due to illness. When the claimant returned to work on December 10, she was discharged by her manager who did not believe she called to report an absence on December 3rd.

**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(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 misconduct in the discharge of the claimant on December 10, 2009, for excessive "unexcused" absenteeism.

The claimant had the misfortune of suffering an injury on November 13 that was compounded by a flu illness shortly thereafter. While the claimant did receive a final warning for a no-call, no-show to work on November 7 when she mis-read her work schedule, she was diligent in calling in her daily absences due to illness for an extended period of time leading to her work return on December 10. The employer witness did not receive a claimant call on December 3rd, but he did not deny claimant's testimony that she may have called another employer worker.

**DECISION:**

The decision of the representative dated January 8, 2010, reference 01, is affirmed. The claimant was not discharged for misconduct in connection with employment on December 10, 2009. 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/pjs