

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RACHEL M STANLEY**  
Claimant

**APPEAL NO. 11A-UI-11635-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES STAFFING SERVICES INC**  
Employer

**OC:07/24/11**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated August 25, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 28, 2011. Claimant participated. Employer participated by Stacy Navarro, human resources coordinator. The record consists of the testimony of Stacy Navarro and the testimony of Rachel Stanley.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a staffing agency. The claimant applied for assignments for temporary employment on September 1, 2010. On September 16, 2010, she was assigned to an employer called The Right Stuff as a general laborer. On September 21, 2010, the claimant called The Right Stuff and the employer to inform them that she would not be at work on September 22, 2010, because her son was ill. On September 22, 2011, she was informed that her assignment was ended.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matters of personal responsibility, such transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). The employer has the burden of proof to establish misconduct.

The evidence in this case cannot be reconciled on when and how the claimant's employment came to an end. The claimant testified that she called the employer on September 21, 2011, to report that she would not be at work on September 22, 2011, because her son was ill. She was then informed on September 22, 2011, that her assignment had come to an end. The employer's records do not show that the claimant was informed that her assignment was ended on September 22, 2011. Rather the note in the file indicates that the claimant was called by the employer on September 22, 2011, to inquire on why she did not show up at work. A message was left for the claimant and the claimant did not respond.

The only direct testimony came from the claimant. The individual from the employer who dealt with the claimant did not testify at the hearing. The administrative law judge concludes that the most reasonable inference from the testimony is that the claimant was told that her assignment was over since she did not go to work even after her son had recovered. The employer had the

burden of proof to establish excessive unexcused absenteeism. One day of absence is not misconduct. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated August 25, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs