

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MONICA L LEWIS**  
Claimant

**APPEAL NO. 07A-UI-05025-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAXIMUS INC**  
Employer

**OC: 04/22/07 R: 02  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Monica Lewis filed an appeal from a representative's decision dated May 8, 2007, reference 01, which denied benefits based on her separation from Maximus, Inc. After due notice was issued, a hearing was held by telephone on June 4, 2007. Ms. Lewis participated personally and offered additional testimony from Marta Harper. Exhibit A was admitted on Ms. Lewis' behalf. The employer participated by Vicki Contreras, Senior Administrator; Corina Gould, Supervisor; and Rick Flowers, Operations Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Lewis was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Lewis was employed by Maximus, Inc., a child support recovery unit, from June 21, 2000 until April 19, 2007. She was last employed full time as a team leader. Ms. Lewis was discharged because of her attendance. The final incident occurred on April 17, 2007 when she left work early due to back pain. She never left work early without permission. She missed a mandatory training meeting on April 14 but notified the employer in advance that she would not be there because of a test she was taking for other employment. All of Ms. Lewis' remaining absences, except for March 2, 2007, were due to illness. The absence of March 2 was due to weather conditions and, other employees were also gone that day because of the weather.

Ms. Lewis was also late reporting to work on some occasions, the last of which was March 26. She was late on this occasion because she overslept. She was also late on January 5, 2007 because she was ill. She was also late on February 12 and February 13, 2007. She was late on those two occasions because she missed the van that transported workers from Des Moines, Iowa, to Marshalltown, Iowa. Ms. Lewis was absent without calling in on October 9, 2006.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. There must be a current period of unexcused absence to support a disqualification from benefits. See 871 IAC 24.32(8).

The final absence that prompted Ms. Lewis' discharge occurred on April 17 when she left work early. Because the absence was for medical reasons and notice was given to the employer, the absence is excused. The last period of unexcused absence was on March 26 when Ms. Lewis was late reporting for work. An unexcused absence that occurred on March 26 would not be a current act in relation to the discharge of April 19, almost one month later. Because the evidence does not establish a current act of unexcused absenteeism, the administrative law judge is not free to consider other, past acts that might constitute misconduct. Inasmuch as the evidence does not establish a current act of misconduct, no disqualification is imposed. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

**DECISION:**

The representative's decision dated May 8, 2007, reference 01, is hereby reversed. Ms. Lewis was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/css