

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CASANDRA A JOHNSON**  
Claimant

**APPEAL NO. 10A-UI-02759-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOOD SAMARITAN SOCIETY INC**  
Employer

**OC: 01/17/10**  
**Claimant: Appellant (2)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Casandra Johnson filed a timely appeal from the February 10, 2010, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on April 5, 2010. Ms. Johnson participated. Denise Leal, Human Resources Director, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 10A-UI-02758-JTT. Department Exhibits D-1 and D-2 were received into evidence. Exhibits One through Four were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Casandra Johnson was employed by Good Samaritan Society, Inc., as a full-time certified nursing assistant from November 2008 until January 13, 2010, when the employer discharged her for attendance. Ms. Johnson's immediate supervisor was Sandy Paulson, Director of Nursing.

The final absence that triggered the discharge occurred on January 12, 2010, when Ms. Johnson was absent from work because her dog had died the night before and Ms. Johnson was grieving the loss of her pet. The employer's absence reporting policy required that Ms. Johnson contact the employer at least two hours prior to the start of her shift. Ms. Johnson was aware of the policy and always complied with it. On January 12, Ms. Johnson went to the workplace at 11:30 a.m. to notify Ms. Paulson that she was too upset to work the shift that started at 2:00 p.m. Ms. Paulson told Ms. Johnson she either needed to find her own replacement or report for the shift. Ms. Johnson was unable to find a replacement and did not appear for the shift. When Ms. Johnson appeared for work on January 13, she was discharged from the employment.

In making the decision to discharge Ms. Johnson from the employment the employer considered Ms. Johnson's prior absences, all of which were due to illness and were properly reported to the employer.

### **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(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.

The employer has the burden of proof in a discharge matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided

the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The administrative law judge need not rule on whether missing work, with proper notice, to grieve the recent loss of a pet constitutes an excused absence or unexcused absence under the applicable law. This is because, even if the administrative law judge concluded the absence was unexcused, the evidence would then establish only a single unexcused absence. A single unexcused absence is not misconduct. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Johnson was discharged for no disqualifying reason. Accordingly, Ms. Johnson is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Johnson.

**DECISION:**

The Agency representative's February 10, 2010, reference 03, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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