

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMARA N STAPLETON
Claimant

APPEAL NO. 10A-UI-12155-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOCUS SERVICES INC
Employer

**OC: 06/20/10
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Tamara Stapleton, filed an appeal from a decision dated August 19, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on October 19, 2010. The claimant participated on her own behalf. The employer, Focus Services, participated by Administrative Assistant Angie Pratt.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Tamara Stapleton was employed by Focus Services from November 9, 2009 until May 12, 2010 as a part-time sales agent. She received a copy of the attendance policy during her employment. Any employee who accumulates four points in one month is subject to discharge. Ms. Stapleton had received a final written warning February 22, 2010.

The claimant was scheduled to work May 8 through 12, 2010. She was no-call/no-show on May 8 and 9, 2010, and called in absent May 10, 11 and 12, 2010, because she was stranded in Chicago. She had left to visit family on Friday, May 7, 2010, even though she maintained she was absent from work Saturday and Sunday because she was too sick to work.

Ms. Stapleton did not return to work on May 10, 2010, because she was stranded out of town due to her car being stolen. She did not make arrangements to take a bus back to Iowa for over a week due to leaving the majority of her available funds at home and her family not having sufficient funds to provide her with a bus ticket.

On May 12, 2010, she called in absent again and was notified by PM Site Lead Shannon Lehnhardt she was fired.

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.

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 claimant had been advised her job was in jeopardy as a result of her absenteeism. In spite of that warning she was no-call/no-show to work for two days when she was out of town on a personal family visit. The administrative law judge cannot accept her statement she was absent due to illness because if she was too ill to work she was too ill to be traveling for personal business. In addition, matters of purely personal consideration, such as lack of transportation, are not considered an excused absence. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). The claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of August 19, 2010, reference 01, is affirmed. Tamara Stapleton is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs