

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANADA A COLEMAN
Claimant

TM1 STOP LLC
Employer

APPEAL NO. 12A-UI-10841-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/12/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated August 30, 2012, reference 01, that held the claimant was not discharged for misconduct on August 13, 2012, and benefits are allowed. A hearing was held on October 2, 2012. The claimant participated. The employer did not participate.

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 began employment on June 5, 2006 and last worked as a full-time supervisor on August 9, 2012. The claimant became ill and went to a local hospital emergency room for treatment. She texted her manager about the illness and she would be absent August 10 for that reason. The manager acknowledged the message. Claimant also had a relative call the employer to confirm the absence.

When claimant reported to work the following Monday, August 13, she was terminated by the employer without any opportunity to contest it.

The employer was not available at the telephone number it provided to be called for the hearing.

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(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.

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 (or a current act of misconduct) in the discharge of the claimant on August 13, 2012, for excessive "unexcused" absenteeism. The employer failed to participate in this hearing and offer evidence of job disqualifying misconduct.

DECISION:

The decision of the representative dated August 30, 2012, reference 01, is affirmed. The claimant was not discharged for misconduct in connection with employment on August 13, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs