

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHY D CASEY

Claimant

APPEAL NO. 10A-UI-00221-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

VOLT MANAGEMENT CORP

Employer

**Original Claim: 03/22/09
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

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated December 29, 2009, reference 03, that held the claimant was discharged for no misconduct on November 24, 2009, and that allowed benefits. A telephone hearing was held on March 22, 2010. The claimant participated. Charlie Read, Project Manager, participated for the employer. Claimant Exhibits A through C and Employer Documents 1 through 6 were received as evidence.

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 worked as a full-time operator manual author at John Deere from June 15, 2009 to November 19. The claimant had been issued verbal and written warnings about absenteeism issues on July 29, August 21, and November 19.

The claimant called in and reported absences to work from her last day to November 24. The claimant was admitted to a local hospital on November 26.

The claimant filed an unemployment claim in Alabama and then received a decision dated January 27, 2010 that denied benefits by reason of her separation from the same employment.

The claimant did not claim for and receive benefits on her Iowa claim dated March 22, 2009, because she had exhausted all benefits. The claimant filed an additional claim effective March 7, 2010.

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(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.

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.

The administrative law judge concludes that the employer failed to establish a current act of misconduct in the discharge of the claimant on November 24, 2009, because claimant's properly reported (recent) absences due to illness do not constitute excessive "unexcused" absenteeism.

The employer did not dispute that claimant timely reported her absences from scheduled work after her last day on the job, but it properly questioned the hospital record as proof that showed an admittance date of November 26. However, the fact that claimant went to the hospital is proof that she was having chest pains and feeling ill from her last day up to November 24. The employer could have requested proof of illness rather than discharge. Properly reported illness is not misconduct. The Alabama decision postdates the Iowa decision in this matter.

DECISION:

The decision of the representative dated December 29, 2009, reference 03, is affirmed. The claimant was not discharged for misconduct in connection with employment on November 24, 2009. Benefits are denied until the claimant re-qualifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw