

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRIE L HYDE
Claimant

APPEAL NO. 07A-UI-09884-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUBUQUE RACING ASSOCIATION LTD
Employer

**OC: 09/16/07 R: 04
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Sherrie Hyde, filed an appeal from a decision dated October 19, 2007, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 7, 2007. The claimant participated on her own behalf. The employer, Dubuque Racing Association, participated by Human Resources/Payroll Clerk Barb Moran.

ISSUE:

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

FINDINGS OF FACT:

Sherrie Hyde was employed by Dubuque Racing Association from March 10, 2006 until June 25, 2007, as a full-time surveillance observer working 11:00 p.m. until 7:00 a.m. She went on FMLA on March 26, 2007, for a variety of personal health problems such as carpal tunnel, anxiety disorder, post traumatic stress and agoraphobia. She applied for workers compensation, which the employer's insurance carrier denied, and has not filed a formal action with the Iowa Industrial Commissioner.

On June 18, 2007, her FMLA was exhausted and the employer notified her in writing that she was terminated.

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 claimant was discharged because she had exhausted her FMLA and was not yet able to return to work. There is no evidence of any misconduct on behalf of the claimant as an illness is not a volitional act. See Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Disqualification may not be imposed.

DECISION:

The representative's decision of October 19, 2007, reference 01, is reversed. Sherrie Hyde is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css