

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINE A SHEPARD
Claimant

APPEAL NO. 10A-UI-00117-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 11/15/09
Claimant: Appellant (1)

Section 96.5-2-A - Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 23, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 11, 2010. Employer participated by David Mollenhoff, Human Resources Coordinator, and Judy Litterer, Assistant Director of Nursing. The employer was represented by Lynn Corbeil, Attorney at Law and Hearing Representative with TALX. Claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of David Mollenhoff; the testimony of Judy Litterer; and Employer's Exhibits 1-8.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a nursing and rehabilitation center called Ravenwood, which is located in Waterloo, Iowa. The claimant was initially hired on September 11, 2008, as a certified nursing assistant. The claimant was working part time on the date of separation of employment, which was November 16, 2009.

The claimant was discharged for excessive unexcused absenteeism. The incidents that directly preceded the claimant's termination occurred on November 15, 2009, and November 16, 2009. The claimant was a no-call/no-show on both of those days. The claimant had had 32 absences in 2008 and 2009 prior to her no-call/no-shows on November 15, 2009, and November 16, 2009. She had received a final warning for attendance on November 11, 2009. The claimant was informed that she would be terminated if she had continued violations. The claimant was absent on November 13, 2009, and November 14, 2009, but she did report her absence on these days.

The employer had a written attendance policy that had been provided to the claimant during her orientation. (Exhibit 2) On October 30, 2009, the employer had held a meeting for all employees to further explain the attendance policy.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The employer has the burden of proof to show absenteeism.

The evidence in this case established that the claimant had excessive unexcused absenteeism. The claimant had been given a final warning on attendance November 11, 2009. She proceeded to miss work on November 13, 2009; November 14, 2009; November 15, 2009; and November 16, 2009. The last two absences were no-call/no-show. The claimant did not participate at the hearing and the reason for all these absences is unknown. The employer has shown misconduct. Benefits are denied.

DECISION:

The decision of the representative dated December 23, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css