

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TASHA M SMITH
Claimant

APPEAL NO. 14A-UI-02862-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

AREA RESIDENTIAL CARE INC
Employer

OC: 02/16/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated March 6, 2014, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on April 7, 2014, by telephone conference call. The claimant participated personally. Employer participated by Terri Pitzen, human resources director; Cindy Leisker, community services department director; and Jamie Wallace, supervisor. Employer's Exhibits 1-11 were received into evidence.

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 social service agency that provides residential programs and day services for individuals with disabilities. The claimant was hired on February 6, 2013. Her last day of work was February 3, 2014. She was terminated on February 3, 2014. At the time of her termination she was an instructor 2.

The incident that led to the claimant's termination occurred on January 31, 2014. The claimant called in sick. This was a violation of the employer's attendance policy. All employees have accrued benefit time to be used for vacation, holiday, and sick time. The claimant exceeded the amount of available benefit time on five scheduled work days. She had been warned about excessive absences. The claimant also received warnings about performance of her job duties.

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). Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7) In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8) See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988) The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. In order to disqualify a claimant from receiving unemployment insurance benefits when there is a discharge for attendance violations, the employer must show that the final absence was an unexcused absence as that term is defined in Iowa unemployment insurance law. Personal illness properly reported is considered an excused absence. The claimant's final absence that led to her termination was for personal illness and therefore excused. The employer did not discharge the claimant for a current act of misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated March 6, 2014, reference 01, is affirmed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs