

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JO ARDYTH L SCOTT
Claimant

APPEAL NO. 12A-UI-13737-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPTIMAE LIFESERVICES INC
Employer

**OC: 10/14/12
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Jo Ardyth Scott, filed an appeal from a decision dated November 9, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on December 18, 2012. The claimant participated on her own behalf. The employer, Optimae, participated by Service Coordinator Betsy Balster.

ISSUE:

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

FINDINGS OF FACT:

Jo Ardyth Scott was employed by Optimae from September 14, 2006 until September 17, 2012 as a full-time community support staff person. Because of the nature of the job, any employee who is going to be absent for a schedule shift must notify the employer at least one hour before the start of the shift. This allows the employer time to find a replacement so the ratio of staff to clients is at required levels.

During the course of her employment Ms. Scott received several verbal counselings about her habit of not giving at least one hour's notice. When the problem did not get resolved she was issued a final written warning July 2, 2012, which reminded her of the notice requirement and which informed her any further incidents could lead to discharge.

On September 15, 2012, the claimant was no-call/no-show to work due to oversleeping. The next day Service Coordinator Betsy Balster left a voice mail message for the claimant as well as a text message notifying her to report to her office at 10:00 a.m. on September 17, 2012, to discuss the situation. Instead of going to the meeting the claimant had a friend call Ms. Balster and say Ms. Scott was sick and they were going to the emergency room. The employer told the caller to tell the claimant she must call and talk to her personally sometime before the end of the day, but she never did.

At the end of the scheduled day September 17, 2012, the employer sent the claimant a letter notifying her she was discharged.

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 clamant was not discharged for absenteeism so much as her failure to properly follow the required noticed procedure to call in at least one hour before the start of the shift. Ms. Scott maintained Ms. Balster had told her earlier "not to call in so early" but to wait and see if she felt better by the start of the shift. The administrative law judge does not find this to be credible. The notice requirement was so that a substitute could be found so the employer could maintain the proper staff/client ratio.

The final incident of being no-call/no-show was due to oversleeping. Matters of purely personal consideration, such as oversleeping, are not considered an excused absence. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). Ms. Scott not only had an unexcused absence but did not properly report it. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of November 9, 2012, reference 01, is affirmed. Jo Ardyth Scott is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs