

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SOBEIDA ESPINAL
Claimant

APPEAL NO. 08A-UI-05247-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CCO INC
Employer

**OC: 05/04/08 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 4, 2008, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on June 16, 2008. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Duane Bachus participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer from October 25, 1999, to May 5, 2008. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination after three days of absence without notice to the employer. The claimant had been warned regarding her attendance after she was absent from work without notifying the employer on April 21, 2008.

The claimant was absent from work in late April 2008. She had a doctor's note excusing her from working through April 29. She was scheduled to work on April 30, May 1, and May 2. She was absent on each of these days without any notice to the employer.

When the claimant reported to work on May 5, 2008, the employer discharged her for excessive unexcused absenteeism.

The claimant called in and provided a telephone number to call for the hearing. When the number was called at the time of the hearing, she could not take the call because she had neglected to pay her phone bill and her service was disconnected. She did not call in and provide an alternative number to call for the hearing. Instead, she called in at 2:30 p.m. after the hearing record had closed using her daughter's phone.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant has shown good cause to reopen the hearing as required by 871 IAC 26.8(5). The claimant had an obligation to notify the Appeals Section before the hearing record closed if she was not available at the number she had provided for the hearing. Further, the claimant was at fault in not making sure she was current on her payments to her telephone provider. She had to have known she was delinquent on her payments and that termination of her service was likely. No good cause for reopening the hearing has been shown.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

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.

The evidence establishes that the claimant was absent from work for three days without any notice to the employer. Excessive unexcused absenteeism has been proven in this case.

DECISION:

The unemployment insurance decision dated May 4, 2008, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css