

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH E RACINE
Claimant

APPEAL NO. 13A-UI-10210-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IVANHOE COUNTRY CLUB
Employer

OC: 08/04/13
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Sarah Racine, filed an appeal from a decision dated August 29, 2013, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on October 3, 2013. The claimant participated on her own behalf and with Marily Racine and Amy Sheufelt. The employer, Ivanhoe Country Club, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

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

FINDINGS OF FACT:

Sarah Racine was employed by Ivanhoe Country Club from March 25, 2013 until July 20, 2013 as a receptionist. Ms. Racine suffered a non-work-related “traumatic event” May 6, 2013. Her mother called in to the employer to report the claimant absent on May 24, 25 and 26, 2013. The reason given was “post-traumatic stress.” She called in absent herself on June 21, 2013, without giving a reason.

During that phone call Amy Sheufelt informed her she was being taken off the schedule for 30 days to allow her to “regain balance in her life.”

On July 20, 2013, Ms. Sheufelt called her again to say she was being discharged for absenteeism.

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.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer discharged the claimant for absenteeism on July 20, 2013. But the employer had removed her from the schedule a month before. The above Administrative Code section requires there to be a current, final act of misconduct before a discharge will result in

disqualification from receiving unemployment benefits. There was no such current act as Ms. Racine been taken off the schedule by the employer and she had not had any unexcused absences on or about July 20, 2013, which precipitated the discharge. Disqualification may not be imposed.

DECISION:

The representative's decision of August 29, 2013, reference 01, is reversed. Sarah Racine is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs