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

JONTA S WOOLRIDGE
Claimant

APPEAL NO. 09A-UI-03423-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**"CHATHAM OAKS CARE FACILITY
"CHATHAM OAKS INC**
Employer

**OC: 02/01/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

Chatham Oaks Care Facility filed a timely appeal from an unemployment insurance decision dated February 26, 2009, reference 01, that allowed benefits to Jonta S. Woolridge. After due notice was issued, a telephone hearing was held March 17, 2009 with Ms. Woolridge participating. Executive Director Vivian Davis participated in the hearing for the employer.

ISSUE:

Was the claimant discharged for a final, current act of misconduct?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jonta S. Woolridge was employed as a residential aide by Chatham Oaks Care Facility from November 13, 2007 until she was discharged January 8, 2008. The final incident leading to her discharge occurred on January 4, 2008 when she left work early because she was feeling ill.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. It does not.

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 employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). Although excessive unexcused absenteeism is misconduct, absence due to illness properly reported to the employer cannot be held against an employee for unemployment insurance purposes. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The evidence in the record establishes that Ms. Woolridge left work early on January 4, 2008 because of illness. This was not an act of misconduct for unemployment insurance purposes. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated February 26, 2008, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

_____
Dan Anderson
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs