

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIKA L JOHNSON
Claimant

APPEAL NO. 10A-UI-14166-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY CARE INC
Employer

**OC: 02/14/10
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Mika Johnson, filed an appeal from a decision dated October 13, 2010, reference 04. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 30, 2010. The claimant participated on her own behalf. The employer, Community Care, participated by Managers Ginger Pingel and Tina McQuiston and Human Resources Generalist Laura Christensen. Exhibit One was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Mike Johnson was employed by Community Care from March 30, 2010 until September 22, 2010 as a full-time direct support professional working 10:00 p.m. until 6:00 a.m. She received a copy of the employer's attendance policy and progressive disciplinary policy.

Ms. Johnson received a verbal warning April 22, 2010, when she had received one point, and a written warning on June 29, 2010, when she had 2.5 points. A final written warning and three-day suspension was given on August 6, 2010, and she was notified the next step would be discharge.

Ms. Johnson was absent from work due to car problems on September 18, 2010, which did put her at the level of discharge. She worked September 19, 2010, and at the beginning of the shift was told by the supervisor that Managers Ginger Pingel and Tina McQuiston needed to talk to her. She left work at 6:00 a.m. the morning of September 20, 2010, but did not report for work that evening because she still did not have transportation. The employer contacted her and requested to meet with her on September 22, 2010. As of that date, she had accumulated more than the number of points required for discharge and she was notified at that time she was fired.

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.

The claimant had been advised her job was in jeopardy as a result of her absenteeism. After the final warning, she missed several more days, the final incident due to lack of transportation. Matters of purely personal consideration, such as lack of transportation, are not considered an excused absence. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). The record establishes Ms. Johnson was fired for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of October 13, 2010, reference 04, is affirmed. Mika Johnson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw