

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDA J HANDT-MORAN**  
Claimant

**APPEAL NO: 12A-UI-08377-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SUBWAY**  
Employer

**OC: 08/21/11  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's July 9, 2012 determination (reference 03) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Jessica Jones, the store manager, appeared on the employer's behalf. Based on the evidence, the parties' arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The employer rehired the claimant on January 10, 2012, as a part-time sandwich artist. When the employer rehired the claimant, the employer told her that she would not have a job if she did not call the employer when she was unable to work. When the claimant worked before, she did not notify the employer when she was unable to work.

The claimant worked as scheduled on May 8, 2012. The claimant was scheduled to work on May 10, 2012. She did not call or report to work because she had a migraine and went to the emergency room. The medication she received at the emergency room made the claimant sleep. The claimant did not call the employer on May 11. The employer did not receive any messages from the claimant until May 15. On May 15, the claimant and Jones talked on the phone. The employer did not receive any messages from the claimant's boyfriend and did not talk to him or see him at work.

On May 15, the claimant told the employer she had been in the hospital for a migraine and the medications she received made her sleepy and "pretty much out of it." The claimant also told the employer she had not contacted the employer before because she had been sleeping every day. The claimant apologized for not talking to Jones sooner. The claimant understood that when the employer rehired her, she was required to notify the employer when she was unable to work.

Since the claimant had not called or reported to work on May 10, 11, 12, 13, 14, the employer discharged her.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew and understood when the employer rehired her in January 2012 she was required to notify the employer when she was unable to work as scheduled. The claimant also knew that if she did not notify the employer when she was unable to work, the employer would discharge her. On May 10, the claimant may have gone to the emergency room because of a migraine. She also may have been unable to work the May 10 through 15. But, she failed to properly notify the employer she was unable to work. The claimant asserted she called the employer before May 15, but the employer did not have any messages from the claimant. The claimant's contention that she called and talked to an employee, J., on May 13 is not supported by any evidence. The claimant testified that her boyfriend called and went to her workplace to let the employer know she was ill and unable to work. But, Jones did not talk to her boyfriend on the phone or at work. The evidence indicates the claimant did not notify the employer or make the necessary arrangements for someone else to notify the employer.

The claimant committed work-connected misconduct when she failed to properly notify the employer that she was ill and unable to work on May 10, 11, 12, 13, and 14. The claimant is not qualified to receive benefits as of May 13, 2012.

**DECISION:**

The representative's July 9, 2012 determination (reference 03) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 13, 2012. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw