

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY J GANSEMER
Claimant

APPEAL NO. 06A-UI-10520-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CFA INC
Employer

**OC: 01/29/06 R: 03
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, CFA, Inc., filed an appeal from a decision dated October 26, 2006, reference 02. The decision allowed benefits to the claimant, Mary Gansemer. After due notice was issued, a hearing was held by telephone conference call on November 13, 2006. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Branch Manager Carla Alvarez.

ISSUE:

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

FINDINGS OF FACT:

Mary Gansemer was employed by CFA, Inc., from July 7, 2006 until November 12, 2006. She was employed during this time at Sunoco. At the time she filled out an application for employment, the claimant received a copy of the attendance policy. The employer expects employees to appear for work at the client company every day unless notified otherwise by one of the CFA, Inc., representatives. If an employee does not appear at the client company, that person must first call the employer's office to determine if they are to report for work the next day. Three days of no-call/no-show to work is grounds for discharge.

Ms. Gansemer's last day of work at Sunoco was November 2, 2006. She was no-call/no-show to work from November 3 until November 12, 2006, and did not contact anyone at CFA, Inc., during that time. The employer gives employees some leeway about calling in from day to day but after a full week of not reporting for work or contacting the employer to request more work, she was discharged.

Ms. Gansemer filed an additional claim for benefits with an effective date of September 17, 2006. She received benefits for three weeks but has not filed another claim or received benefits since the week ending October 7, 2006.

The record was closed at 11:13 a.m. At 2:30 p.m. the claimant called and indicated she had missed the hearing because she thought it was scheduled for November 14, 2006. She had not called in a telephone number because she thought she could arrive at her local Workforce Center 30 minutes before the scheduled time of the hearing and then call in the number. She did not read the instructions to provide the telephone number to the Appeals Section immediately upon ascertaining the number she would be using.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 was no-call/no-show to work for eight work days. She never contacted the employer to indicate what caused her to be absent and did not present any evidence on that issue at the hearing. The administrative law judge therefore concludes her absences were unexcused and excessive. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

The next issue is whether the record should be reopened. The judge concludes it should not.

Ref 94 (delete last two sentences)

The first time the claimant called the Appeals Section for the November 13, 2006 hearing was after the hearing had been closed. Although the claimant may have intended to participate in the hearing, the claimant failed to read or follow the hearing notice instructions and did not contact the Appeals Section as directed prior to the hearing. In addition, she was not available because she did not carefully read the notice to realize the hearing was November 13, not November 14, 2006. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. The claimant did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

DECISION:

The representative's decision of October 26, 2006, reference 02, is reversed. Mary Gansemer 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/cs