

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SERENA BALL
Claimant

APPEAL NO. 11A-UI-11486-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEDAR VALLEY HUMANE SOCIETY
Employer

**OC: 07/24/11
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Cedar Valley Humane Society (CVHS), filed an appeal from a decision dated August 26, 2011, reference 01. The decision allowed benefits to the claimant, Serena Ball. After due notice was issued a hearing was held by telephone conference call on September 16, 2011. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Communications Director Jan Clarke and Executive Directors Bob Citrullo.

ISSUE:

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

FINDINGS OF FACT:

Serena Ball was employed by CVHS from October 3, 2009 until July 13, 2011 as a part-time adoption counselor. On April 9, 2010, Ms. Ball received a copy of the employee handbook. The handbook sets out the policy regarding the reporting of absences. An employee must call at least one hour before the start of the shift and speak directly to a supervisor. It specifically states text messages and e-mails are unacceptable. This was reinforced by a memo which was sent out when the new executive director was appointed and also emphasized by Communications Director Jan Clarke to Ms. Ball in person.

Ms. Ball received a written warning on March 30, 2011, about her absenteeism. It notified her that any further problems with her attendance and failure to properly report could result in discharge. On Saturday, July 9, 2011, Ms. Ball texted Ms. Clarke to state she would not be in to work because she was sick. The next day another supervisor mentioned she and Ms. Ball had been on a river rafting trip. When questioned by Ms. Clarke the other supervisor merely stated she had assumed Ms. Ball had the day off and had not questioned her presence on the rafting trip.

The claimant's next day of work was July 13, 2011, on which date Ms. Clarke issued her a final warning and notified her she was discharged for failing to properly report her absence and for falsifying the reason for her absence.

Serena Ball filed a claim for unemployment benefits with an effective date of July 24, 2011. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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, tardiness and failure to properly report her absence. The final incident was a violation of a known company rule when she texted the supervisor she would be absent instead of calling and speaking directly as required. In addition, Ms. Ball falsified the reason for her absence asserting

she was ill when she was in fact engaged in a social activity. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of August 26, 2011, reference 01, is reversed. Serena Ball 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/pjs