

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE NELSON
Claimant

APPEAL NO: 06A-UI-09099-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CINCLEAN INC
Employer

OC: 10-30-06 R: 02
Claimant: Respondent (1)

Section 96 5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 6, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 26, 2006. The claimant participated in the hearing. The claimant participated in the hearing, Cindy Weber, Owner and April Ketchum, Bookkeeper, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time cleaning assistant for Cinclean Inc. from May 31, 2006 to August 3, 2006. On July 28, 2006, the claimant did not call the employer's cell phone number or show up for work and the employer determined she voluntarily left her position. The employer left her a message around 8:00 a.m. and asked her to call in but the claimant did not do so. She reported for work Monday, July 31, 2006, and Bookkeeper April Ketchum allowed her to return to work because she did not have the authority to fire employees. Ms. Ketchum asked where she was Friday and the claimant said she went to the races, had too much to drink, and overslept. Ms. Weber returned to work from vacation August 3, 2006, and asked the claimant why she was absent and the claimant gave her the same reason. The employer told her she was required to call in to report any absences and terminated her employment. The claimant testified she called the employer's office twice around 6:00 a.m., but did not receive an answer and the voicemail did not pick up. She received Ms. Ketchum's message when she woke up around noon but did not return the call because she assumed it was too late.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). A single unexcused absence does not constitute excessive unexcused absenteeism, even though claimant disregarded employer's instructions to call back with further information about the situation. Sallis v. EAB, 437 N.W.2d 895 (Iowa 1989). While the claimant's absence was clearly unexcused, and she failed to call the correct number to report her absence, the employer has not demonstrated excessive, unexcused absenteeism as defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The September 6, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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