

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIZABETH A RAMIREZ

Claimant

APPEAL NO. 07A-UI-08421-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN HOME SOCIETY

Employer

**OC: 08/05/07 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated August 30, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 25, 2007. The claimant participated. The employer participated by Ms. Kris Pedersen and Ms. Lottie Testrake. Employer's Exhibits One through Nine were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional disqualifying misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from April 8, 2006 until July 23, 2007. Ms. Ramirez was employed as a full-time hydration aide and was paid by the hour. The claimant was discharged after she exceeded the permissible number of attendance infractions allowed under Lutheran Home Society policies. Ms. Ramirez was aware of the policies and had received a number of warnings prior to her discharge. The claimant was given a final warning on May 31, 2007 and was informed at that time that she could not miss any more work in the next 60 days or she would be discharged from employment.

On July 20, 2007, the claimant called in ill properly reporting her impending absence prior to the beginning of the work shift. Ms. Ramirez indicated that she was ill with a "migraine headache" and could not report for work. The employer called the claimant back and spoke with her en route to a doctor's office. Ms. Ramirez visited a doctor's office where she was examined by a replacement physician as her regular doctor was out of town. The claimant received two injections at that time for her migraine condition. Ms. Ramirez was informed by the employer not to report for scheduled work over the weekend. The following Monday Ms. Ramirez met with Lutheran Home's management and her supervisor. Ms. Ramirez did not provide a doctor's

note as she had not thought to obtain one due to the severity of her migraine headache. The claimant offered to obtain a doctor's excuse at that time, however, the claimant was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Supreme Court indicates that Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is one form of misconduct provided that it is both excessive and unexcused. The court further held that absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. Based upon the facts of this case and the above cited Iowa Supreme Court case, the administrative law judge concludes that the claimant was not discharged for intentional misconduct in connection with her work. The evidence establishes on July 20, 2007, Ms. Ramirez properly notified her employer of her impending absence due to illness and was unable to report due to a verifiable medical condition. Although the claimant offered to provide a medical statement to her employer at the time of her discharge, the claimant was nonetheless discharged based upon violation of the Lutheran Home's attendance policy. Although an employer may adopt policies regarding attendance or other matters for their own purposes, the administrative law judge is required to follow state law and not employer attendance policies in determining whether intentional disqualifying misconduct in connection with a worker's employment has been established. Based upon the hearing record in this matter, the administrative law judge concludes that the claimant's most recent attendance infraction was for illness and properly reported and thus excused.

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.

For the reasons stated herein, the administrative law judge finds that there is no act of intentional disqualifying misconduct at the time of the separation. Benefits are, therefore, allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated August 30, 2007, reference 01, is hereby affirmed. The claimant was discharged under non disqualifying conditions and is eligible to receive unemployment insurance benefits, providing that she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs