

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLEA L SAMBERG
Claimant

APPEAL NO. 13A-UI-10019-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

AT&T MOBILITY SERVICES LLC
Employer

OC: 07/28/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated August 21, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on October 15, 2013, in Davenport, Iowa. The claimant participated personally. The employer participated by Michael Kelly, quality manager, and Kris Jackson Perry, area manager. The employer was represented by Kevin Salmon. The record consists of the testimony of Kris Jackson Perry and the testimony of Carlea Samberg. Michael Kelly did not testify.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is an inbound call center located in Davenport, Iowa. The claimant was hired on July 19, 2010, as a full-time inbound customer service representative. Her last day of work was August 2, 2013. She was terminated on August 2, 2013.

The claimant was terminated due to excessive absenteeism. The claimant was a no-call/no-show on the following dates: July 25, 2013; July 27, 2013; July 28, 2013; and July 30, 2013. The claimant was also absent on July 21, 2013. She was scheduled to be back from vacation but her flight had been delayed. The employer had an attendance policy, of which the claimant was aware, that all absences were to be reported to the employer.

REASONING AND CONCLUSIONS OF LAW:

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct.

See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7). The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The evidence is uncontroverted that the claimant had four instances of no-call/no-show within one week. The claimant testified that she was sick. Absences due to personal illness are excused absences but only if the claimant properly notified the employer. The claimant admitted that she did not properly notify the employer. The absences are therefore considered unexcused. Benefit are denied.

DECISION:

The decision of the representative dated August 21, 2013, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs