

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANA M O'DELL

Claimant

APPEAL NO. 07A-UI-01427-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP INC

DBA DOLLAR GENERAL

Employer

**OC: 01/07/07 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Dollar General filed a timely appeal from an unemployment insurance decision dated February 1, 2007, reference 01, that allowed benefits to Shana M. O'Dell. After due notice was issued, a telephone hearing was held February 26, 2007 with Ms. O'Dell participating. Store Manager Jeff Kutzbach participated for the employer.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Shana M. O'Dell was hired as a cashier by Dollar General on July 18, 2004. The employment ended on or about December 12, 2006.

Ms. O'Dell applied for FMLA leave after being injured off the job. The corporate personnel office asked her to submit documentation in support of her leave request by December 12, 2006. Ms. O'Dell, in a series of telephone calls to corporate headquarters, advised them that her doctor was on vacation and would be unable to complete the forms by the due date. Ms. O'Dell was told to submit them as soon as possible. She did so on December 22, 2006. Having heard no word from the company, she called in early January 2007 to find that she was no longer considered an employee.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does not.

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.

Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7). Absence due to a medical condition cannot be held against an employee for unemployment insurance purposes provided the employee properly reports the absence to the employer. The evidence in this record establishes that Mr. Kutzbach, the claimant's supervisor, was aware of the reason for her absences. The evidence also establishes that Ms. O'Dell had advised the corporate personnel office that she could not submit the medical documentation in support of her FMLA request by the due date because of the absence of her physician. The evidence in this record persuades the administrative law judge that Ms. O'Dell did all within her power to provide the employer with timely information concerning her medical condition and her need to be absent from work. Misconduct has not been established by the evidence in this record.

The employer asserted in its appeal letter that the claimant quit. There is no evidence in the record establishing that the claimant desired to end the employment relationship. Under these circumstances, the administrative law judge cannot conclude that the separation was a quit. Benefits are allowed.

DECISION:

The unemployment insurance decision dated February 1, 2007, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/kjw