

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA K LAMPERCHT
Claimant

APPEAL NO. 10A-UI-02031-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOODS INC
Employer

OC: 12/27/09
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Debra Lampercht filed an appeal from a representative's decision dated January 29, 2010, reference 01, which denied benefits based on her separation from Foods, Inc. After due notice was issued, a hearing was held by telephone on March 18, 2010. Ms. Lampercht participated personally. The employer participated by Pat Childress, Store Director.

ISSUE:

At issue in this matter is whether Ms. Lampercht was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Lampercht was employed by Foods, Inc., doing business as Dahl's, from October 16, 2006 until November 24, 2009. She was last employed full time as a clerk. She was discharged because of her attendance. The final infraction that prompted her discharge occurred on November 23, 2009.

Ms. Lampercht was scheduled to work from 1:00 until 9:00 p.m. on November 23. She called at the start of her shift to report that there was a broken water line in her apartment and she could not come in until the plumber made repairs. She also notified two coworkers that she would attempt to come in. The plumber was at her apartment until approximately 7:00 p.m. Ms. Lampercht did not report to work or re-contact the employer to say she would not be there. She was notified of her discharge on November 27.

Ms. Lampercht had missed work on other occasions. The employer did not have a record of other occasions on which she had been late or absent. She always properly reported her intent to be absent. Some of her absences were due to illness and some to illness of family members. She also missed time after her brother's death. Some of her absences were supported by a doctor's statement. Ms. Lampercht had not received any written warnings regarding her attendance but the employer had put her on notice that it was unsatisfactory. Attendance was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from benefits if she was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused.

There must be a current act of unexcused absenteeism to support a disqualification from benefits. See 871 IAC 24.32(8). In the case at hand, the final absence was that of November 23 when Ms. Lampercht was absent due to a broken water line in her apartment. The absence is unexcused as it was due to a matter of purely personal responsibility. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The employer did not present evidence of any unexcused absences other than that of November 23. It was incumbent upon the employer to provide specific details concerning Ms. Lampercht's discharge as mere allegations of misconduct are not sufficient to result in disqualification from benefits. See 871 IAC 24.32(4).

Ms. Lampercht did not have a history of missing work for personal reasons. The situation of November 23 was not one she could have predicted or guarded against. Given these factors, the administrative law judge concludes that the one unexcused absence of November 23 is not sufficient to establish excessive unexcused absenteeism within the meaning of the law. While the employer may have had good cause to discharge, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated January 29, 2010, reference 01, is hereby reversed. Ms. Lampercht was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs