

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**JENNIFER L GLASPIE  
533 RIEHL ST  
WATERLOO IA 50703**

**GRAY TRANSPORTATION INC  
PO BOX 2365  
WATERLOO IA 50704**

**KELLY LEKAR  
ATTORNEY AT LAW  
PO BOX 956  
WATERLOO IA 50704-0956**

**Appeal Number: 04A-UI-05806-HT  
OC: 05/02/04 R: 03  
Claimant: Respondent (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer, Gray Transportation (Gray), filed an appeal from a decision dated May 19, 2004, reference 01. The decision allowed benefits to the claimant, Jennifer Glaspie. After due notice was issued a hearing was held by telephone conference call on June 15, 2004. The claimant participated on her own behalf and was represented by Attorney Kelly Lekar. The employer participated by General Manager Darren Gray. Exhibit One was admitted into the record.

#### 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: Jennifer Glaspie was employed by Gray from September 15, 2003 until May 10, 2004. She was a full-time dispatcher.

The claimant was absent beginning April 29 through May 9, 2004. She had notified Operations Manager Jan Etringer the evening of April 28, 2004, she would not be in the next day due to being hospitalized for 24 hours. On April 29, 2004, she called a dispatcher, Leo, and asked him to leave a note for Jan to report she would not be in on April 30 or May 3, 2004, due to continuing health problems. On May 4, 2004, she called and left a voice mail message for Owner Leroy Gray saying she would not be in due to another doctor's appointment. Around 3:30 p.m. she came in to talk to Ms. Etringer, her supervisor, but was told she would have to talk to General Manager Darren Gray. Mr. Gray was in a meeting because he had not known when the claimant would be in. She left after 5:00 p.m. when he had still not finished with his meeting. During her wait, she left doctor's excuses with the payroll person. The final doctor's statement indicated she could return to work on May 10, 2004.

On May 5, 2004, Ms. Glaspie talked to Ms. Etringer and was told she was excused through May 10, 2004, and to return to work then. However, when she reported for work that day she was told by Mr. Gray that the drivers she dispatched had been assigned to other dispatchers and her services were no longer needed due to her unreported absences.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is 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.

871 IAC 24.32(1)a, (7) provide:

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).

(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.

The employer has asserted that the claimant was no-call/no-show to work for five days. However, the claimant's testimony is that she contacted supervisors, dispatchers, the owner and the general manager during the course of her absence. She provided doctors' statements excusing her from work and gave them to the payroll person. Her supervisor was aware of these statements as Ms. Etringer knew the claimant had been excused through May 10, 2004. The record establishes the claimant did make a good-faith effort to notify the employer of her absences and provide medical excuses. The absences cannot be considered either unreported or unexcused. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Disqualification may not be imposed.

DECISION:

The representative's decision of May 19, 2004, reference 01, is affirmed. Jennifer Glaspie is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/kjf