

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

LISA M LAWSON
1003 W 3RD AVE #61
INDIANOLA IA 50125-3165

GOOD SAMARITAN SOCIETY INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-04877-CT
OC: 04/24/05 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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Good Samaritan Society, Inc. filed an appeal from a representative's decision dated April 28, 2006, reference 04, which held that no disqualification would be imposed regarding Lisa Lawson's separation from employment. After due notice was issued, a hearing was held by telephone on May 22, 2006. Ms. Lawson participated personally and offered additional testimony from Kelly Dooley. The employer participated by Lori Welch, Human Resources Director; Gwen Musick, Director of Nurses; and Layne Gross, Administrator.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Lawson was employed by Good Samaritan

Society, Inc. from October 25, 2005 until April 7, 2006, as a full-time LPN. She was discharged due to unacceptable attendance. All of her absences were reported to the employer. With the exception of February 8, all of her absences were due to either her own illness or that of her child. Ms. Lawson was absent on February 8 because her ex-husband suffered a heart attack out of state and she took their daughter to visit him.

Ms. Lawson received a verbal warning about her attendance on November 15 and a written warning on December 1, 2005. She was given a final written warning on March 20, 2006. She was next absent on April 1 but found her own replacement to work that shift. She called on April 2 to report that she would be absent due to illness. Because she did not have a doctor's excuse for April 2, Ms. Lawson was suspended on April 5 and notified of her discharge on April 7, 2006. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Lawson was separated from employment for any disqualifying reason. 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 receiving benefits if she was excessively absent on an unexcused basis. Absences that are for reasonable cause and are properly reported are considered excused absences.

All of the absences on Ms. Lawson's record are excused as they were all for reasonable cause. The absences were due primarily to her own illness or the illness of her daughter. She did miss one day when she took her daughter out of state to visit her father, who had suffered a heart attack. The administrative law judge considers this reasonable cause for missing work. The fact that Ms. Lawson did not always have a doctor's excuse for her absences does not establish that she was not, in fact, too ill to work. Inasmuch as all of Ms. Lawson's absences are excused, they may not form the basis of a misconduct disqualification, regardless of how excessive. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, the administrative law judge concludes that the employer has failed to establish that Ms. Lawson should be disqualified from receiving benefits.

DECISION:

The representative's decision dated April 28, 2006, reference 04, is hereby affirmed. Ms. Lawson was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kkf