

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBORAH J BEAM**  
Claimant

**APPEAL NO. 07A-UI-08213-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RESCARE INC**  
Employer

**OC: 02/04/07 R: 04  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Rescare, filed an appeal from a decision dated August 23, 2007, reference 03. The decision allowed benefits to the claimant, Deborah Beam. After due notice was issued, a hearing was held by telephone conference call on September 11, 2007. The claimant participated on her own behalf. The employer participated by Human Resources Associate Jolene Kirby. Exhibits One, Two, Three, and Four were admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Deborah Beam was employed by Rescare from March 16 until July 9, 2007, as a part-time community support staff member. She had received a written warning on June 27, 2007, which included, among other items, a warning about her failure to properly report her absences. The warning advised her that her job was in jeopardy if there were any further rule violations.

On July 6, 2007, the claimant advised Service Coordinator Kevin Ewinger her brother was hospitalized after an auto accident and she would not be in to work July 7, and 8, 2007. He said he would “get it covered.” But she was discharged on July 9, 2007, for being no-call/no-show to work for those two days.

**REASONING AND CONCLUSIONS OF LAW:**

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 provides:

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.

871 IAC 24.32(7) provides:

(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 the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The employer alleged the claimant was no-call/no-show to work for two shifts, but the documents it submitted appear to show that Mr. Ewinger had contacted the on-call person about getting coverage for the claimant's shifts, which would indicate she did report her absence to him a day in advance.

Rescare did not provide testimony from Mr. Ewinger, who would be the only person able to rebut the claimant's assertion she had talked to, and received permission from, him to be gone those two scheduled days. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which she was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

**DECISION:**

The representative's decision of August 23, 2007, reference 03, is affirmed. Deborah Beam is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw