

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAMONA M LOHBERG
Claimant

APPEAL NO. 11A-UI-08821-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WILD ROSE CLINTON LLC
Employer

**OC: 06/05/11
Claimant: Appellant (5)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Ramona Lohberg, filed an appeal from a decision dated July 1, 2011, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on July 27, 2011. The claimant participated on her own behalf. The employer, Wild Rose participated by Human Resources Generalist Kristina Snyder, Facilities Manager Lori Snyder and Housekeeping Supervisor Ronald Vonthun..

ISSUE:

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

FINDINGS OF FACT:

Ramona Lohberg was employed by Wild Rose from May 3, 2010 until June 13, 2011 as a full-time housekeeper working 11:45 p.m. until 7:45 a.m. She received a final written warning in March 2011 for absenteeism. The warning notified her of her attendance point total and that her job was in jeopardy if she missed any more work.

Ms. Lohberg was no-call/no-show to work at 11:45 p.m. on June 9, 2011, because she had overslept. She woke up shortly after midnight and before she could call the employer, Housekeeping Supervisor Ron Vonthun called and asked where she was. The claimant said she was ill and would not be in to work but she would call Facility Manager Lori Snyder the next morning, which she did. The claimant acknowledged to Ms. Snyder she knew she had exceeded her attendance point total and the manager agreed she had been “terminated.”

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 claimant did not quit by being no-call/no-show to work. She was discharged for exceeding the limit of attendance points. The final incident was being absent due to oversleeping and not calling in prior to the start of the shift. Matters of purely personal consideration, such as oversleeping, are not considered an excused absence. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). The claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of July 1, 2011, reference 01, is modified without effect. Ramona Lohberg was discharged for misconduct. She is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css