

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARISSA BRILES

Claimant

APPEAL NO. 14A-UI-07116-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEST MANAGEMENT SUB TRS CORP

Employer

OC: 06/08/14

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated July 2, 2014 reference 04 that held claimant was not discharged for misconduct on May 6, 2014 and benefits are allowed. A hearing was held on August 4, 2014. The claimant participated. Deb McWilliams, and Dean McWilliams, Co-Community Managers, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the witness testimony and having considered the evidence in the record finds that: The claimant worked as a full-time housekeeper from May 20, 2013 to about May 6, 2014. Claimant reported absences to the employer due to illness for April 24/25.

The employer called claimant the morning of April 28 to ask why she was not at work. Claimant responded about 11:30 a.m. saying she had been in the emergency room at a local hospital for pneumonia all night.

Claimant reported back to work on April 29 and worked each day the week ending May 2. The employer repeatedly asked for some medical statement proving claimant had been in the hospital on April 28. When claimant had failed to produce it by the following week on May 6, the employer told claimant to bring it in or not come back to work.

Claimant had not been given a doctor excuse from work on April 28 and she was advised she would need to make an appointment to get it. She did not want to share any medical statement with the employer due to confidentiality. She was paying for her own insurance and did not want to pay for an appointment to get the excuse.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 administrative law judge concludes employer failed to establish misconduct in the discharge of the claimant on May 6, 2014, for excessive "unexcused" absenteeism.

The employer did not challenge claimant's reported illness for April 24/25 only her April 28 absence. The employer challenged claimant to get an excuse for that day and it represents only one occurrence of unexcused illness. Claimant made it clear she did not have a medical excuse for that day and the employer challenge to claimant after she had worked seven days to bring it or not come back is an employment termination. The discharge is not based on excessive unexcused absenteeism, so job disqualifying misconduct is not established.

DECISION:

The decision of the representative dated July 2, 2014, reference 04, is affirmed. The claimant was not discharged for misconduct in connection with employment on May 6, 2014. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs