

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA ALLEN
Claimant

APPEAL NO. 10A-UI-10447-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 05/13/10
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, University of Iowa, filed an appeal from a decision dated July 21, 2010, reference 01. The decision allowed benefits to the claimant, Lisa Allen. After due notice was issued a hearing was held by telephone conference call on September 9, 2010. The claimant participated on her own behalf. The employer participated by Staff Benefits Specialist Mary Eggenburg and Program Director Rachel Napoli.

ISSUE:

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

FINDINGS OF FACT:

Lisa Allen was employed by University of Iowa beginning November 2, 1989 as a full-time clerk. She received warnings for absenteeism beginning in 2009. On March 8, 2010, she was suspended for three days and notified the next disciplinary step would be a five-day suspension.

After that suspension she had three more absences which were not covered by her approved FMLA, one incident of tardiness and had failed to properly note her time off on her time sheet. Two of the three absences were due to illness not covered by the FMLA, and one for personal business. The tardiness was also due to illness. The absences and tardiness were all reported prior to the start of her shift. She corrected her time sheet when the error was brought to her attention by her supervisor.

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.

871 IAC 24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

A properly reported illness cannot be considered misconduct as it is not volitional. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The employer did not assert the absences were not properly reported. Only one may be considered to have been unexcused when she was absent due to personal business. One absence cannot be considered excessive. There is no evidence the error on the time sheet was anything other than an honest mistake which was corrected when brought to Ms. Allen's attention.

The record does not support a finding of substantial, willful, job-related misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of July 21, 2010, reference 01, is affirmed. Lisa Allen is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs