

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHAUN R HANKEMEIER**  
Claimant

**APPEAL NO. 09A-UI-05125-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACCESS DIRECT TELEMARKETING INC**  
Employer

**Original Claim: 03/01/09  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated March 26, 2009, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on April 29, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Alyce Smolsky participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked as a consultive sales representative from August 25, 2008, to February 18, 2009. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. Under the employer's attendance policy, an employee is subject to termination after accumulating six or more attendance points in 90-day period.

The employer issued a final written warning to the claimant after she had 10.55 points as of December 31, 2008. She received a review for termination warning on February 4, 2009, because she had 9.6 points. She had been absent from January 13 to February 2, 2009. The employer did not assess points for days that were due to her caring for her grandmother who was ill. Some of her points were due to transportation problems.

On February 19, 2009, the claimant was schedule to work at 8:00 a.m. She did not report to work or call the employer to notify the employer that she would not be at work. Her grandmother died on February 8. Her grandmother's belongings had to be moved out of the nursing home by the end of the month, so the claimant decided to work on that rather than report to work. She did not call because she figured that she going to be discharged anyway, and she was frustrated that she could not talk to someone in the human resources office about her problems.

When the claimant did not report to work or call in, the manager, Jessie Rodriguez, called the claimant at about 11:00 a.m. and informed her that she was discharged for excessive absenteeism.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule about calling to notify the employer about her absence was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. While I sympathize with the claimant's situation with her grandmother, packing her grandmother's belongings on a workday was not an excused reason for missing work. The claimant knew her job was in jeopardy due to her attendance problems. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated March 26, 2009, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw